



# IP Examiner<sup>TM</sup>

Published by the Intellectual Property Law Section of the Federal Bar Association

Winter 2022-2023

## Message From the Section Chair



On behalf of the FBA's IP Law Section, I hope that you enjoy our quarterly newsletter. Our Section has substantive committees that focus on Patent Law, Trademark Law, Copyright Law, and Trade Secrets Law. If you are interested in getting involved

with one of those committees, please contact me.

Our first event in 2023 is our Section's Admission Ceremony at the Supreme Court of the United States, which will take place on January 17. Our Section's Immediate Past Chair, Ira Cohen, will be addressing the Chief Justice and the Associate Justices of the Supreme Court, to move for admission of our group. After the admission ceremony, the group will stay in the courtroom to observe oral arguments in two cases.

Looking forward to February 2023, the Federal Bar Association will be accepting submissions for the Spring edition of the association's national magazine, *The Federal Lawyer*. The Spring edition will focus on

*[Chair: Continued p. 3.]*

## Message from the Editor

This is the Winter 2022-2023 Edition of the *The IP Examiner*<sup>TM</sup> of the IPLS.

We invite you to read our Newsletter in order to keep you *au courant* regarding upcoming IPLS activities and events. In this issue, we have an informative piece by Kelly Malloy, Esq. about USPTO's latest rule regarding the shortened response time on Examiner's Office Actions that affects all Trademark Attorneys. In addition, we have an article about Copyright and Count Dracula which you can sink your teeth into. So, enjoy the read.

We trust that you will find this issue of the *IP Examiner* useful, educational, and entertaining to read. Please note that we welcome written submissions for future issues. The Chair of IPLS has included some pertinent links in that regard. (*See p.3.*) The next issue of *The IP Examiner* will be published in the Spring of 2023.

Please also note that *The Federal Lawyer* magazine is always open to submission of new content for its issues.

*[Editor: Continued, p. 3.]*

**Thank you very much, IPLS board members and officers.  
Thank you very much, FBA national staff.**

**Disclaimer:** The *IP Examiner* is a journal of discussion and opinion created and authored by and for IP professionals. All opinions expressed herein are those of the writers alone and do not represent the official position of the FBA, the IPLS Section, or any organization with which the writer is associated.

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## TRADEMARK LAW

### Office Action Response Period for U.S. Trademark Applications Shortened to Three Months

By Kelly Malloy

In the wake of the Trademark Modernization Act of 2020 (“TMA”), the United States Patent and Trademark Office (“USPTO”) promulgated a new, shorter period for responding to Office Actions issued in connection with pending trademark applications. The change flows directly from the USPTO’s amendment of 37 C.F.R. § 2.62, which was authorized by the TMA’s revision of § 12(b) of the Trademark Act. Specifically, the TMA’s amendment to § 12(b) permitted the USPTO to set response periods between sixty (60) days and six (6) months, with the option to provide extensions.

For Office Actions issued on or after December 3, 2022, trademark applicants will only have three (3) months to address Office Actions as opposed to the six (6) months previously allotted. Applicants filing under § 66(a) of the Trademark Act, commonly known as the Madrid Protocol, are excluded from the rule. The USPTO stated that “these flexible response periods are intended to promote efficiency in examination by shortening the prosecution timeline for applicants with issues that are relatively simple to address, while

providing sufficient time, through an optimal extension, for responses to Office [A]ctions with more complex issues.” USPTO data from the fiscal year 2020 indicates that 42% of represented applicants and 66% of unrepresented applicants responded to Office Actions refusing registration on a single substantive basis within three months from issuance. However, both figures declined to 31% and 56% respectively for Office Actions including more than one substantive ground for refusal – a significant drop of at least 10% each.

Importantly, applicants will be able to request a single three (3) month extension for a fee of \$125.00 if filed electronically or \$225.00 if the request is paper filed. With no retroactive effect, the shortened response period will only implicate pre-registration Office Actions; the new rule will not apply to Office Actions issued in post-registration matters until October 7, 2023.



#### Author

Kelly Malloy is a Registered Patent Attorney with the law firm of Malloy & Malloy, P.L. and assists with a wide range of patent, trademark, copyright, and intellectual property litigation matters. She earned her bachelor’s degree in Industrial and Systems Engineering from the University of Florida and her law degree, *magna cum laude*, from the University of Miami School of Law.

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The current (interim) 2023 Editorial Calendar for TFL is as follows:

Issue	Topic	Articles Due	Mail Date
WINTER/Feb	Criminal Law	November 15	February 3
SPRING/May	Intellectual Property Law	February 15	May 5
Digital Issue (Summer)	TBD	April 15	July 7
SUMMER/Aug	Convention	May 15	August 4
FALL/Nov	TBD	August 15	November 3
Digital Issue (Winter)	TBD	October 15	January 5

Thank you, in advance, for your time, support, and submissions.

Ira Cohen Esq., Editor, IPLS, [icohen@ictrademarksandcopyrights.com](mailto:icohen@ictrademarksandcopyrights.com)

## COPYRIGHT LAW

### Court Clerks, Copyrights, & Count Dracula

By Ira Cohen, B.A., J.D., LL.M.

"Vampires have been accused of many things over the centuries. But for IP types, perhaps their most notable accomplishment was the revenge they took upon the copyright system.

Last month marked one hundred years since the first screening in Berlin of the iconic vampire movie—*Nosferatu: A Symphony of Horror*. And, while the copyright laws were used to try to keep the film from public view, ultimately it failed, to the continuing benefit of cinematic creation. The tale of *Nosferatu* shows the sometimes-uneasy relationship between copyright protection and the making of derivative works.<sup>1</sup>

The cinematic seeds of the world's iconic and legendary vampire, Count Dracula, were planted by Irish author Abraham ("Bram") Stoker very late in the 19<sup>th</sup> century. Since that time, innumerable adaptations and variations in the forms of stage plays, movies, television shows, children's shows, and even crunchy and choco-

latey kids' cereal have been spawned.<sup>2</sup>

However, vampires are nothing new in the darkened hearts and troubled minds of men and women. After all, blood-curdling tales of bloodsucking, demonic creatures had long existed in the myths and legends of various cultures especially in the Easternmost regions of the European continent. Apart from the oral traditions, family stories, rural folklore, and supernatural superstitions, there also were some fascinating earlier written works dealing with vampires.

"There are such beings as vampires, some of us have evidence that they exist. Even had we not the proof of our own unhappy experience, the teachings and the records of the past give proof enough for sane peoples."<sup>3</sup>

While there were some vampiric references in 18<sup>th</sup> and 19<sup>th</sup>- century poetry, most notable among the more substantial works were "The Vampyre" (1819) and "Carmilla" (1872). Dr. John Polidori, author of the former work, was Lord Byron's physician; Lord Byron previously had written, among other things, an epic poem, "The Giaour" (1813) which alludes to vampirism.<sup>4</sup> It is said that the protagonist of Polidori's early 19<sup>th</sup>-century work, the undead Lord Ruthven, was based on Byron's wild and crazy life and posthumous legend.

[*Dracula: Continued p. 4.*]

[*Chair: Continued from p. 1.*]

Intellectual Property Law, and **articles are due by February 15, 2023**. Writer's guidelines can be found here: <https://www.fedbar.org/accepting-articles-for-publication/writers-guidelines/>.

In March 2023, our Section looks forward to participation in the FBA's Leadership Summit, which will take place March 24–25 at the Ritz Carlton in Pentagon City. Attendees that arrive early can also consider participating as judges in the 2023 Thurgood Marshall Moot Court Competition (March 22–23), or attending the FBA's Capitol Hill Day (March 23).

To round out the Spring, the Art and Fashion Law Conferences will take place April 3-4, 2023 in New York City. Please keep an eye on the Section's home page for more information as the date approaches: <https://www.fedbar.org/intellectual-property-section/>.

I look forward to seeing you at future FBA events and I encourage you to contact me to get more involved in the FBA's IP Law Section.

Kindest regards,

Oliver A. Ruiz

Chair, Intellectual Property Law Section

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## Early New Year IPLS Events (2023)

**January 17, 2023, SCOTUS Admission Ceremony:** THE IPLS will be in Washington, D.C., At the U.S. Supreme Court in January (Jan. 17, 2023), For a special small group admissions ceremony and hear oral arguments.

## IPLS Board (2022-2023)

Chair: OLIVER A. RUIZ,, ESQ.

Deputy Chair: OLIVERA MEDENICA, ESQ.

Treasurer: PAUL D. SUPNIK, ESQ.

Secretary: MARC RAPPAPORT, ESQ.

Note: The Board Officers' Bios and contact information may be found at the end of this newsletter.

[*Dracula: Continued from p. 3.*]

As for “Carmilla,” that particular work was penned by Irish author Sheridan Le Fanu a quarter of a century before Bram Stoker’s entered into the literary arena of the undead with “Dracula.” That earlier Gothic novella is narrated by a young woman who is the victim of a female vampire named Carmilla. These works all share the quintessential elements of Gothic fiction, namely, an ominous old castle, darkened atmosphere, supernatural character(s), mystery, and various and sundry superstitious themes.

The Irish author, Bram Stoker (1847-1912) did not start off as a novelist. Rather, after he graduated from Trinity College, he worked as a Clerk in the Irish Court system for (you guessed it) 13 years. After promotion to Inspector of Courts of Petty Sessions, three years later, he wrote a legal textbook, “The Duties of Clerks of Petty Sessions in Ireland” (1879).

Soon, however, Bram became quite interested in vampire legends and started focusing not so much on the law, but rather on lore. He undertook extensive research and did his homework well. He worked for about seven years on the book. It is believed that he dubbed his bloody count “Dracula” because he believed that the word meant “devil” in Romanian. This masterpiece of his literary oeuvre has become one of the best-known works in English literature. Moreover, *Dracula*, the novel, also has been translated into at least 30 foreign languages. Ironically, is it not as well-known in Romania where the action begins; mysteriously, it was first published there as late as 1990.<sup>5</sup>

Stoker’s novel was fashioned in an epistolary format, meaning that there are multiple narrators and that the book’s pages are populated by diary accounts, telegrams, letters, etc. Count Dracula’s heritage, abilities, powers, and weaknesses are seen through the eyes of, and reported by, third parties (including the hapless, helpless victims). The original book was published in 1897 with a distinctive yellow cover, with blood-red lettering. Today, the first edition (along with other, early versions) is a quite valuable antiquarian find.

The Count Dracula described in the book is an undead, centuries-old vampire; he is a Transylvanian nobleman who rules over a decaying castle in the Carpathian Mountains. Dracula is painted as a handsome and charismatic figure, with a dash of a charming aristocrat to boot. At first blush, a welcoming a gracious host, Dracula, the eternal evil one that he is, must survive by drinking the blood of others; he also appears to harbor a ravenous appetite for young and beautiful women.

Over time, Bram Stoker’s “Dracula” has been adapted for numerous short stories, plays, and movies. The character has even morphed into widespread usages for food goods (e.g., “Count Chocula” cereal), Halloween costumes, cartoon shorts (e.g., Count Duckula) and full-length films (e.g., Hammer Films’ *Dracula* movies).

Regrettably, Dracula’s author never lived to see the success and popularity of the stage play or the films. After Bram died a horrible (yet un-supernatural) death in 1912, two years later, his widow, Florence Stoker, “resurrected” him by publishing a short story collection entitled “Dracula’s Guest and Other Weird Stories.” Florence, as it turns out, was Bram’s literary executrix. It was only a matter of time before his *pièce de résistance*, *Dracula*, would spread its paper wings and be immortalized for eternity on the silver screen.

The first reincarnation of the Count was, in 1921, with “Drakula halala” (“Dracula’s Death”), a silent film made in Austria, using Count Dracula, though the plot of which was not based on Bram Stoker’s novel. The basic storyline was a woman who was experiencing frightening visions while in an insane asylum where one of the inmates claims to be Dracula; she cannot figure out if the visions are nightmares or real. The film went missing in 1923 and remains lost to time.<sup>6</sup>

A little over 100 years ago, the second known early film adaptation of *Dracula* was an unauthorized and infringing film work released by Prana Film<sup>7</sup> and Producer Albin Grau.<sup>8</sup> German expressionist filmmaker F. W. Murnau’s silent film was released with a different name, “Nosferatu: A Symphony of Horror,” (*Nosferatu: Eine Symphonie Des Grauens*)(1921), also now considered a classic horror film in its own right. The lead actor was the German actor, Max Schreck, who played the vampire, whose name was changed by Murnau to Count Orlok.

The changed name of the film, the vampire, and some other alterations were not divergent enough to ward off the courageous “vampire-slayer” (not “Buffy”), but rather the widowed Florence Stoker. Although some details were modified, there was no question that many of the Murnau film’s ideas, concepts, characters (if not by name), and themes, were impermissibly lifted from Stoker’s novel. Furthermore, the Murnau film’s advertisements and marketing declared *Nosferatu* was freely adapted from *Dracula* and the film’s credits make the same unabashed claim very clear. It should be added that in the *Dracula* film, the word “nosferatu” (meaning the “undead”) was utilized in the script as filmed.

Yet, there were many novel constructs and cinematic



surprises included in the film as well. The one thing that Grau and Murnau did not have was the Stoker Estate's permission to allow their film to see the light of day.

"A century on, 'Nosferatu' is still revered for its experimental techniques- shooting on rugged locations as well as in a studio; using stop-motion animation and fast-motion footage—and for the glut of horror-movie conventions it established. The film includes villagers in a tavern who warn the hero not to proceed, and conceit that vampires are burnt to ash by sunlight. It is the archetypal Dracula film. And yet, its most strikingly modern aspects are those that leave Stoker's novel behind."<sup>9</sup>

Florence Stoker sued the German filmmakers for plagiarism and copyright infringement because she allegedly neither had been asked for permission for the adaptation nor paid any royalties. The German law case dragged on like a zombie for several years. Initially, Florence wanted money but when the Germans kept appealing and refusing to pay, she had to change her legal tactics. Finally, in 1925, the widow Stoker won, and Prana Film went bankrupt; she demanded, among other things, that every negative and all prints of the film be destroyed. A German court eventually obliged her, and agents were sent out to hunt down and destroy copies of the film. Fortunately for civilization and cinematic culture, all was not lost; a few prints of the film survived the German agents and even escaped the Nazis in wartime in occupied France. The celluloid classic ultimately found a new home – and new screen life -- in America years later. Like the titular character, the film and Count Orlok would again rise to become the living dead... at least in theatres.

In fact, "Nosferatu" typically is viewed by casual viewers and film critics alike as a cinematic masterpiece. What is interesting here, for us, is that some of the changes made have clawed their way into the vampire canon which Hollywood to this day uses for its vampire folk. In that respect, the very acts of copyright infringement also served some useful — and entertaining — purposes.

The story of *Nosferatu* is quite similar to that of *Dracula*; the core *dramatis personae* are retained (*e.g.*, Jonathan and Mina Harker, the Count, etc.) The setting, though, was changed, from 19th-century Britain to 1830s Germany. Also, in stark contrast to the enigmatic Count *Dracula*, Count Orlok is not charming or suave; he does not create other vampires when he sinks his fangs into their unlucky necks; he is fonder of rats than bats; and he simply kills off all of his prey. Count Orlok, of necessity, must sleep by day, as sunlight would kill him, while Stoker's *Dracula* would only be weakened by

the rays of the sun. The Hollywood filmmakers mixed and matched the elements they liked best when their cameras rolled (metaphorically) into the movie mountains of Transylvania.

Nowadays, of course, you can watch "Nosferatu" in the comfort of your own home, but don't turn out the lights. Some copies have a musical background added. In the alternative, if you are pressed for time, you can also watch a short, but rather entertaining version, in a long video made with the audio track of the rock band Blue Oyster Cult as the background music to their song "Nosferatu."<sup>10</sup>

The film-makers responsible for *Nosferatu* intentionally violated copyright law. There can be no question about, or getting around, that point. Even the opening titles of the film claimed to have adapted Stoker's book into film. Stoker did not live to see either *Nosferatu* or *Dracula*, but the two films most assuredly preoccupied his widow, Florence.

Nevertheless, the fusion of vampire legends and differing film-crafting approaches created a master-stroke of the cinematic arts. However, today, rather than pit the two legendary vampires against each other, it has become quite clear that the two films work in a complementary fashion; they do not diminish each other; rather, they build up and augment the fantastic realm of the undead.

The stage production of *Dracula* came about in 1924, written by an Irish actor and playwright, Hamilton Deane, a friend and neighbor of the Stoker family. As the widowed Florence was then embroiled in her copyright lawsuit against Prana Films in Germany, she needed money and she authorized the adaptation of the book for the stage and, later, for film.<sup>11</sup>

"Meanwhile, Hollywood's Universal Studios, undeterred by the Berlin legal squabbles, bought the screen rights for \$40,000—roughly \$584,000 today—allowing Florence Stoker to live out her days in comfort."<sup>12</sup>

As for Murnau, who like Lugosi, had moved to America, the Prana curse finished him off too; "[t]hree weeks after Universal's *Dracula* had its Hollywood premiere in February 1931, 43-year-old Murnau died in a car accident in nearby Santa Barbara."<sup>13</sup> As they say, karma is a b\*#@\$!

Bram Stoker, being learned in the law, was well aware of copyright law and its requirements. One of the interesting things he did, in order to acquire stage rights, was to arrange a quick, dramatic reading of his work, in London's Lyceum Theatre, in 1897.<sup>14</sup> (This work was only performed once in that manner.)

Notwithstanding, both the stage plays and film that Florence authorized were not 100% true to Stoker's novel, and they stitched together elements of both *Dracula* and the detested *Nosferatu*, as well as borrowed from the prior *Dracula* stage versions, in order to create the wonderful work, we see on film in 1931 with Bela Lugosi. Parenthetically, we should add that the Spanish language version, *Drácula*, which was filmed back-to-back in 1931 by Universal actually was more faithful to the novel than the English language-Lugosi version.

Following its success in England, the *Dracula* script later was revised for American audiences by John L. Balderston and producer Horace Liverwright in 1927. After 261 performances on the Great White Way in New York City with Lugosi as the leading actor, the *Dracula* play spread its wings and flew off into the night for a national tour until 1928. For the touring company, Lugosi was replaced by Raymond Huntley, the actor who had portrayed *Dracula* in England for 4 years.

This is around the time that Universal Pictures enters the *Dracula* story and timeline. Universal, through the efforts of its main executive Carl Laemmle, had an established track record of bringing horror spectacles to the big screen. Years earlier, it had released the classic silent film versions of *The Hunchback of Notre Dame* (1923) followed by *The Phantom of the Opera*, both starring the legendary "Man of a Thousand Faces," Lon Chaney, Sr. (1925).<sup>15</sup>

There appears to be some disagreement as to whether Bram Stoker had properly copyrighted his "*Dracula*" work. Some scholars believe that the work lapsed into the public domain because Stoker had provided only 1, not 2, deposit copies to the U.S. Copyright Office. That is a disputed point.

In any event, Universal bought the rights from the Widow Stoker and the first authorized film version of *Dracula* was released about a decade later, in 1931, when Universal Studios released Director Tod Browning's master-stroke, *Dracula*. That film was based on the 1924 stage play "*Dracula*," also starring Béla Ferenc Dezső Blaskó, p/k/a Bela Lugosi.

And so, it passed that the great Hungarian-American actor, Bela Lugosi (1882-1956),<sup>16</sup> mesmerized and terrified Depression Era audiences around the globe in his star-making role as the iconic vampire, Count *Dracula*. Believe it or not, it was reported at that time that people actually fainted in some theatres. The gothic horror movie classic film, "*Dracula*," produced by Universal Pictures and based on Bram Stoker's 1897 novel of the same dreaded name, was a monstrous critical and commercial success.

Indeed, 1931 was an epic year for Universal inasmuch as the film studio also released another memorable and classic fright-flick in that same year, the one-and-only "*Frankenstein*," which made a star out of a relatively unknown English actor, Boris Karloff, and filled Universal's coffers with even more money.

Later, in 1943, Universal Pictures released the "*Son of Dracula*," this time with Lon Chaney, Jr. (best remembered for playing the long-suffering Lawrence Talbot, a pitiable victim of lycanthropy who turned into the "Wolfman" whenever the full moon appeared). In "*Son of Dracula*," however, Chaney Jr. plays Count Alucard (which was simply an alias for *Dracula*).

In real life, the Son of Bela Lugosi, Bela George Lugosi (a/k/a Bela Lugosi, Jr.), though not a Thespian, did not fly far from the family's Tinseltown nest. He spent the lion's share of his more than fifty-year professional legal career in Los Angeles practicing Entertainment Law.

"When Hollywood stars feel the corporate leeches are sucking the very blood from their own image rights and intellectual property, who do they call? None other than the son of cinema's definitive vampire- Bela George Lugosi!"<sup>17</sup>

Bela Lugosi, Jr. is a gifted, retired American IP attorney who long-practiced law in the State of California.<sup>18</sup> He is doubtless best remembered for his legal work in the case of *Lugosi v. Universal Pictures*.<sup>19</sup> Albeit the trial court ruled in favor of the Plaintiff, ordering the barring of the use of Bela Lugosi's likeness and awarding \$70,000, the ruling, lamentably, was overturned on appeal. That subsequent loss, however, only served as a catalyst for legal change thanks to the indomitable efforts of Bela Lugosi, Jr.

"Unbowed, Lugosi turned his attention to lobbying the state's legislature, which ultimately resulted in the California Celebrities Rights Act 1985. That legislation allowed rights to survive a celebrity's death. Speaking exclusively to *Legal Cheek* on the eve of Halloween, lawyer Lugosi proudly pointed out that up to half the US states have now followed California's example with celebrity rights statutes. 'Image and intellectual property rights are now at the forefront of contract negotiations between celebrities and film-makers, he said!'"<sup>20</sup>

It is questionable, of course, whether the populace at large is more afraid of vampires or lawyers. A strong case can be made for the latter proposition.

"Lawyers are like that famous vampire-bat, said to exist in Hungary, which seizes on a creature, and never lets go while there is blood left."<sup>21</sup>

Nevertheless, in a very real sense, IP law, and most particularly copyright law, breathed eternal life into Dracula<sup>®</sup>.<sup>22</sup> It could also be said to have energized the Frankenstein<sup>®</sup><sup>23</sup> monster and put hair on the chest of the Wolfman<sup>®</sup>.<sup>24</sup> Even though these classic fright films enjoyed their heyday in the 1930s and 1940s, they are all still very much alive thanks to the many contracts, licenses, and reruns involved in television, cable television, CDs, and streaming platforms. Horror film aficionados can now tune in and watch their favorite old scary movies on demand and not wait for the full moon to start howling at their television monitors, clawing at their remotes, or sinking their teeth into their nachos.

The copyright law also seriously affected the Hunchback of Notre Dame film; the claimants apparently had neglected to renew their registration in the 28<sup>th</sup> year after publication (the law at that time) and, thus, the film lapsed into the public domain in 1951. As for the Phantom of the Opera film, it, too, suffered the same ghastly legal fate. Once again, the claimants failed to renew their registration and, as it was with the demented and deformed Hunchback, the film consequently lapsed into the public domain in 1953. Oh, the horror of it all!

During the 1930s, Universal Pictures was quite a family affair. Head Honcho Carl Laemmle had a niece, Carla (an actress and dancer) who was cast into roles in both the Dracula and Frankenstein films in 1931. More importantly, however, the heir to the throne at Universal was his son, Julius Laemmle, p/k/a Carl Laemmle, Jr. (a/k/a “Junior”) (1908-1979). It was Junior who primarily was responsible for bringing to life the great classic monster films made by Universal during the period from 1928-1936.

Indeed, Junior burned up \$40,000 of Universal's money to buy up all the rights to the Dracula novel and the stage plays; thus, Universal monopolized the exclusive rights to the Dracula character. It turned out to be a good investment, however, generating a colossal amount of box office buzz and ticket-stub receipts (and a \$700,000 profit) for Dracula. However, despite the production of other horror cult classics (*i.e.*, Frankenstein (1931), The Mummy (1932), The Invisible Man (1934), and the Bride of Frankenstein (1935)), it appears that Junior additionally gained a reputation for spending a great deal more money on the making of the films than the films would eventually go on to earn. Not shockingly, he and Carl Senior later were unceremoniously bought out by movieland “suits” (film industry corporate interests).

It is, in retrospect, a great shame for Junior because he never made another film. A year earlier, in 1930, he had produced 2 non-horror films, the King of Jazz and

the world-renowned WWI film, “All Quiet on the Western Front.” Both films were highly acclaimed and went on to be selected for film preservation in the United States Film Registry by the Library of Congress as being “culturally, historically, or aesthetically significant.” Frankenstein later was added to that consequential list (in 1991), as was The Bride of Frankenstein (in 1998), Dracula (in 2000), and The Invisible Man (in 2008). In all, then, Junior had six films on the coveted list maintained by the Library of Congress.

Moreover, Junior and his team at Universal showcased their ingenuity in many ways during those pioneering days of Hollywood. In the earliest array of sound films, Universal wisely produced parallel pictures (foreign-language versions) of their films. The same sets and costumes were employed. Thus, when Tod Browning, the Director of Dracula (with Bela Lugosi) had finished for the day, Director George Melford and his team of Latin-American actors would come in at night and film the Spanish-language version *Drácula*, starring Spaniard Carlos Villariás as Conde Drácula and the ravishing Lupita Tovar as the film's heroine.<sup>25</sup>

Long thought lost, a print of *Drácula* was discovered in the 1970s, of which large sections had rotted away. In the early 1990s, however, a cleaner, clearer copy was discovered in Cuba. The Spanish language film version of Dracula also has been preserved in the U.S. National Film Registry of the Library of Congress (as of 2015).

The stage play, so popular and successful in both England and the United States became the template for the new film. Ostensibly, the screenwriters also watched and studied the silent, unauthorized version, of F. W. Murnau's *Nosferatu*, for ideas and inspiring guidance.



Autographed Photo from the Pvt. Collection of Ira Cohen (2023).

So, who was the man behind the monster? Bela was born in Lugos, Hungary (now part of Romania). He played in many stage works with the National Theatre of Hungary in 1913 and, later, fought in a war against the Russians.<sup>26</sup> A lieutenant in the Ski Patrol, he was wounded in the Carpathian Mountains (which would later be the backdrop for *Dracula* and other vampire films) no less than 3 times. Notably, in 1916, he was back to acting; he played none other than Jesus Christ in a production of *The Passion*. By 1920, though, Bela was on a boat bound for America and two years later he was on Broadway (cast as a charming Latin lover) in the 1922 play called *The Red Poppy*. That was all the more amazing, particularly when you consider that Lugosi did not, at that time, speak English; he learned all of his lines phonetically.

When he was later approached to play Count Dracula on Broadway, Lugosi was not certain it would end well; all of his previous parts were essentially romantic characters. As it turned out, he had nothing to fear; as mentioned above, the play was a bloody success (pun intended).

Yet, when Universal acquired the rights and set about procuring the film version of *Dracula*, Lugosi (who still harbored a heavy, Hungarian accent and who was not by any means, a household Hollywood name) he was nowhere near the Director's first choice. Tod Browning considered a number of other actors before finally offering the part to Lugosi.

His compensation was anemic. For the landmark horror film, the movie that created an iconic image, and has given folks nightmares right down to the present day, Bela Lugosi was paid the paltry sum of \$500 per week for 7 weeks of shooting.

Later, in perhaps a major-career blunder, Lugosi turned down the lead role in Universal's next fright film, *Frankenstein*. As the story goes, Lugosi did not like the fact that the "monster" had only a few lines and, moreover, that he would have had to play the role under a ton of makeup and a heavy costume. So, instead, a then-little-known English-American actor named Boris Karloff took the lead role and, as they say, the rest is movie history. Karloff would storm ahead to get more, varied, and better-paying roles, not to mention top billing, from Universal; in all, he would go on to make a staggering total of 174 movies. Boris also appeared on radio and television in many different types of productions as well as in numerous stage plays.<sup>27</sup> Many children (and their parents) also will remember Karloff for his unforgettable voice-acting in the narrator role in the original cartoon-film version of the Dr. Seuss classic, *"The Grinch Who Stole Christmas."*

Some say that Lugosi and Karloff were bitter rivals and competitors who feuded endlessly; still others say they were friends and worked amicably together.<sup>28</sup> In any event, Karloff's handling of being identified with the "monster" (in his case, the *Frankenstein* monster), was quite different than Lugosi's. "The monster was the best friend I ever had." "Certainly, I was typed. But what is typing? It is a trademark, a means by which the public recognizes you. Actors work all their lives to achieve that. I got mine with just one picture. It was a blessing."<sup>29</sup>

Asked whether he resented being typed a "horror star," Karloff—who evidently understood IP—mused:

"I was lucky. Whereas bootmakers have to spend millions to establish a trademark, I was handed a trademark free of charge. When an actor gets in a position to select his own roles, he's in big trouble, for he never knows what he can do best. I'm sure I'd be damn good as little Lord Fauntleroy, but who would pay ten cents to see it?"<sup>30</sup>

Surprisingly, despite the many horror films he made, and the indelible impression he made as Count Dracula, Lugosi only appeared on screen as Count Dracula twice; once was in 1931, the original film, and the second time was 17 years later when he reprised his most famous role for the 1948 horror-comedy *"Abbott and Costello Meet Frankenstein."*<sup>31</sup>

Overall, Lugosi made more than 30 Hollywood films, many of them interesting and memorable works including, but not limited to, *"the Black Camel"* (1931), *"White Zombie"* (1932), *"The Black Cat"* (1934), *"The Raven"* (1935), *"Son of Frankenstein"* (1939), *"Ninotchka"* (1939), and the *"Body Snatcher"* (1945). Lugosi, who had suffered the fate of being quickly typecast as a horror villain, appeared more than a handful of times along with Boris Karloff (8 movies, in fact).

On the private and home front, Lugosi was married five times, was an avid soccer fan, and was a devoted stamp collector (to the tune of a staggering collection of 150,000 stamps). In honor, in 1997, the image of Lugosi appeared on a U.S. commemorative postage stamp.

After the *Dracula* film, he was type-cast not only as the Count, but as a horror-genre villain. Over the years, exceedingly frustrated by the lost auditions, more minor roles, and type-casting, his career and life degenerated into one of illness and drug addiction (to doctor-prescribed painkillers), as well as alcohol addiction. He had suffered years of back and leg pain from a toxic combination of his old war injuries and various injuries playing the *Frankenstein* monster and other roles. The result was a severe case of sciatic neuritis. With the doctors'



aiding and abetting, he suffocated his pain with narcotic medicines. In some strange, sad fashion, then, the celluloid characters of Dracula and Frankenstein conspired to kill Lugosi.

In 1956, at age 73, he suffered a fatal heart attack, not by a horrific wooden staking by some relentless vampire hunter, but rather by perishing peacefully in his sleep. Lugosi, the legend, had passed from the “undead” to the dearly departed.

In life, Lugosi had often been heard to observe: “I never play without my cape.”<sup>32</sup> Thus, despite his supposed bitter resentment during his life about being type-cast as Dracula, it is believed that he wanted to be buried in his hallmark vampire’s mantle.

“Every actor’s greatest ambition is to create his own, definite and original role, a character with which he will always be identified. In my case, that role was Dracula.”<sup>33</sup>

Who could disobey Count Dracula’s final command? His widow, and son, Bela Jr., actually went one better. They thought that the recently deceased Bela would have approved of being outfitted with the complete vampire treatment, so Lugosi was buried in his full Count Dracula costume.

No one has ever reported that Bela Lugosi was not a dedicated actor and a hard worker. His work ethic was also legendary. He worked through type-casting, lean times, bad times, sick times, and addiction. He took on minor roles to get work; later in life, he made live appearances, some of which were more than embarrassing, to keep his name and face alive and to promote films or just to make money to eat and pay his bills.

In short, it cannot be said that Bela gave anything less than his heart and soul to his profession. And, indeed, to him, acting was a profession, as much of a profession as if he were a doctor or a lawyer.

“The stage is near and dear to me.”<sup>34</sup>

“I studied at the Budapest Academy of Theatrical Arts for four years and emerged with a degree.”<sup>35</sup>

“In Hungary, acting is a profession. In America, it is a decision.”<sup>36</sup>

“In Hungary, acting is a career for which one fits himself as earnestly as one studies for a degree in medicine, law, or philosophy.”<sup>37</sup>

Bela Lugosi, Sr. tried many times, for many years, to break out of being type-cast as a vampire, horror villain, demented assistant, or mad doctor, without much success:

“Because of my language and the pantomime with which most Europeans accompany their speech, I was catalogued as a heavy.”<sup>38</sup>

“It took me years to live down Dracula and convince the film producers that I would play almost any other type of role.”<sup>39</sup>

“Of all the roles I’ve done on the stage, I’m partial to Cyrano de Bergerac.”<sup>40</sup>

“I look in the mirror and say to myself, can it be you that once played Romeo?”<sup>41</sup>

Truly, if you are happy with your chosen profession—doctor, lawyer, or actor—and your work field or specialty within that profession, you are doubly blessed. One of Bela Lugosi, Sr.’s pithy observations might be of service to even modern-day lawyers: “In making theories, always keep a window open so you can throw one out if necessary.”<sup>42</sup>

So, the next time you are burning the midnight oil on the night of a full moon, and reading some forgotten volume of legal lore, be certain, Dear Reader, that you do not leave the window ajar. Hang a wreath of noxious garlic on the front door, bare your mirrors, pour yourself a fortifying goblet of wine,<sup>43</sup> and have a large, silver crucifix at the ready. At all costs, do stay awake; listen for the howl of the wolves; keep a sharp watch out for bats; and pray you do not hear Lugosi’s trademark richly-accented and haunting voice in your boudoir: “Listen to them, the children of the night. What music they make!”<sup>44</sup>

### Author



Ira Cohen, Esq., B.A., J.D., LL.M., is an Intellectual Property Attorney and is the founder and principal of Ira Cohen, P.A. of Weston, FL. He is a member of the Florida and New York Bars, has been practicing law for 42 years, and is rated AV Pre-Eminent® by Martindale Hubbell®. Ira served as Judicial Law Clerk to the Honorable Harold J. Raby, United States Magistrate Judge for the Southern District of New York (1982-85). Ira is the Immediate Past Chair of the FBA’s Intellectual Property Law Section, a proud Sustaining Member of the Federal Bar Association, a Lifetime Fellow of the Foundation of FBA, the Columns Editor for The Federal Lawyer, an FBA Moot Court Judge, a Member of FBA National Council, and an FBA Mentor. Ira can be reached at [icohen@ictrademarksandcopyrights.com](mailto:icohen@ictrademarksandcopyrights.com)

## Endnotes

<sup>1</sup> Neil Wilkof, *IP Kitten Blog* (April 8, 2022), <http://www.ipkitten.blogspot.com/2022/04/when-vampire-not-called-dracula-bested.html>.

<sup>2</sup> Witness the Count Count of Sesame Street fame and General Mills' Count Chocula breakfast cereal. COUNT CHOCULA is a U.S. Registered Trademark, in Class 30, Reg. 1,511,150, owned by General Mills IP Holdings II, LLC.

As for film works, there were memorable later adaptations, after Bram Stoker's *Dracula* lapsed into the public domain, by John Carradine, Christopher Lee, Frank Langella, and Gary Oldman, among others. A number of comedic small-screen television and big-screen movie variations also deserve mention, particularly "Grandpa" (Count Dracula) Munster (played by Al Lewis), "Love at First Bite," a 1979 film starring George Hamilton, and Mel Brook's excellent, yet under-rated 1995 Stoker-spoof, entitled "Dracula: Dead and Loving It," starring Leslie Nielsen.

<sup>3</sup> Quoted in JOHN L. FLYNN, *75 YEARS OF UNIVERSAL MONSTERS 9* (2d ed., Galactic Books, 2019). *See also*, BRAMSTOKER, DRACULA383 (Smithmark Publishers 1995.)

<sup>4</sup> Both men, along with Percy Bysshe Shelley and Mary Wollstonecraft Shelley, were part of a close-knit group of wealthy travelers that held amongst themselves a horror-story writing competition in the Summer of 1816, in Lake Geneva Switzerland; that impromptu contest was won, hands down, by Mary Shelley with her epic creation of the famous Gothic horror novel and sympathetic man-made monster, "Frankenstein." The full title of her work, which explores themes of life, death, and man vs. nature, and was published in 1818, is "Frankenstein or, The Modern Prometheus."

<sup>5</sup> Duncan Light, When was *Dracula* first translated into Romanian?, 11 *Journal of Dracula Studies*, No. 1, Article 2 (2009).

<sup>6</sup> The film was co-written by Mihály Kertész who was a prominent film director in Budapest and later became far better known in America under the professional name *Michael Curtiz*, who was the director of great American film productions such as *Casablanca* (with Humphrey Bogart and Ingrid Bergman) (released 1942).

<sup>7</sup> Prana refers to the Indian word for "life"; ironic then that the film company's first, and last, film was *Nosferatu* and the company quickly died by bankruptcy.

<sup>8</sup> Grau was a lover of the occult; he was a charter member of the infamous Aleister Crowley's sect, *Fraternitas Saturni*.

<sup>9</sup> "Nosferatu" and the birth of the undead, *The Economist*, The Economist, February 26, 2022, <https://www.economist.com/culture/2022/02/26/>

<sup>10</sup> Blue Oyster Cult, *Nosferatu* (1977), video and audio, with clips from the film, Blue Oyster Cult - Nosferatu (1977) bing.com/videos/search?q=blue+oyster+cult+nosferatu&&view=detail&mid=E3702411EBF44D-D45748E3702411EBF44DD45748&&FORM=VRD-GAR&ru=%2Fvideos%2Fsearch%3Fq%3Dblue%2Boyster%2Bcult%2Bnosferatu%26FORM%3DHDRSC3

<sup>11</sup> Derek Scally, *Nosferatu and the fangs of copyright infringement*, *The Irish Times*, March 5, 2022.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> The film was, of course, based on Victor Hugo's 1831 novel and is a celebrated celluloid classic revered both for its ornate film sets of 15th century Paris and Lon Chaney's shock and awe-inspiring make-up and portrayal of Quasimodo, the deformed and tortured hunchback.

<sup>16</sup> Born Bela Ferenc Dezso Blasko in Lugos, Hungary, k/p/a "Bela Lugosi"

<sup>17</sup> Judge John Hack, Legal Cheek.com, October 31, 2014, <http://www.legalcheek.com/news>

<sup>18</sup> Bela Junior voluntarily resigned from the CA. Bar in 2018 at the age of 80.

<sup>19</sup> 603 P. 2d 425 (Cal. 1979). The Supreme Court of California determined in that case that a dead person had no right to their likeness, and any rights that existed did not pass to the decedent's heirs. The decision came after more than a dozen years of litigation. The legal right to exploit one's name and likeness is a personal one; as such, it must be exploited by the individual during his or her lifetime.

<sup>20</sup> Hack, *supra*. The California Celebrities Rights Acts created an inheritable right to a person's name or likeness for seventy (70) years after death. Later legislation, from 2007, extended that right to all persons who had died since January 1, 1938.

<sup>21</sup> Walter Besant, *Dorothy Forster, 73 Read Books Ltd* (2014).

<sup>22</sup> DRACULA is a registered U.S. Trademark (Reg. No. 4,042,239) in Classes 9, 16, 25, and 28, owned by Universal City Studios LLC.

<sup>23</sup> FRANKENSTEIN is a registered U.S. Trademark in Classes 16 (Reg. No. 1,178,108), 25 (Reg. No. 2,057,740), 28 (Reg. No. 3,681,642), AND 33 (Reg. No. 5,848,013), all owned by Universal City Studios LLC.

<sup>24</sup> WOLFMAN is a registered U.S. Trademark in Classes 9 (Reg. No. 1,251,030) and 16 (Reg. No. 16), both owned by Universal City Studios LLC.

<sup>25</sup> Guadalupe ("Lupita") Tovar, a Mexican-American actress lived to the ripe old age of 106. She went on, after *Dracula*, to make many Hollywood films; it was Lupita's husband, producer Paul Kohner, that suggested to Universal's Carl Laemmle to shoot English and Spanish language film works more or less simultaneously.

<sup>26</sup> In Hungary, Lugosi had been in 172 productions.

<sup>27</sup> Boris Karloff has not one, but two, stars on the Hollywood Walk of Fame.

<sup>28</sup> However, such reports have been denied by their family members who claimed that it wasn't the case at all. In fact, it was Lugosi who later took credit for the discovery of Karloff and claimed that it was his unique scouting talent that resulted in the introduction of one of the most iconic movie monsters of all time. Lugosi declared: "Carl Laemmle (studio chief) said he'd permit it if I furnish an actor to play the part. I scouted the agencies and came upon Boris Karloff. I recommended him.... And that is how he happened to become a famous star of horror pictures. My rival in fact." Lugosi's wife agreed with his evaluation of the situation, famously saying: "He made the greatest mistake of his career... Bela created his own monster." Swapnil Dhruv Bose, Exploring the feud between Boris Karloff and Bela Lugosi, Far Out Magazine, Feb. 2, 2022, <https://faroutmagazine.co.uk/feud-between-boris-karloff-bela-lugosi/>

<sup>29</sup> Quoting Boris Karloff, in imdb.com, <http://www.m.imdb.com/name/nm0000472/quotes>

<sup>30</sup> *Id.*

<sup>31</sup> Supposedly, Lugosi had performed in the Dracula stage play around 1,000 times.

<sup>32</sup> Bela Lugosi, searchquotes, [www.searchquotes.com/quotation/I never play without my cape./127656](http://www.searchquotes.com/quotation/I%20never%20play%20without%20my%20cape./127656)

<sup>33</sup> Top 50 Bela Lugosi Quotes (2023 Update) - Quotefancy, [www.quotefancy.com/bela-lugosi-quotes](http://www.quotefancy.com/bela-lugosi-quotes)

<sup>34</sup> Bela Lugosi Quotes - BrainyQuote, [Bela Lugosi www.brainyquote.com/authors/bela-lugosi-quotes](http://www.brainyquote.com/authors/bela-lugosi-quotes)

<sup>35</sup> Top 50 Bela Lugosi Quotes (2023 Update) - Quotefancy, [www.quotefancy.com/bela-lugosi-quotes](http://www.quotefancy.com/bela-lugosi-quotes)

<sup>36</sup> Top 50 Bela Lugosi Quotes (2023 Update) - Quotefancy, [www.quotefancy.com/bela-lugosi-quotes](http://www.quotefancy.com/bela-lugosi-quotes)

<sup>37</sup> TOP 25 QUOTES BY BELA LUGOSI A-Z Quotes, [www.azquotes.com/author/9122-Bela\\_Lugosi](http://www.azquotes.com/author/9122-Bela_Lugosi),

<sup>38</sup> Top 50 Bela Lugosi Quotes (2023 Update) - Quotefancy, [www.quotefancy.com/bela-lugosi-quotes](http://www.quotefancy.com/bela-lugosi-quotes)

<sup>39</sup> Bela Lugosi Quotes (languageisavirus.com), [www.languageisavirus.com/quotes/Bela-Lugosi.php](http://www.languageisavirus.com/quotes/Bela-Lugosi.php)

<sup>40</sup> Bela Lugosi Quotes - BrainyQuote, [Bela Lugosi www.brainyquote.com/authors/bela-lugosi-quotes](http://www.brainyquote.com/authors/bela-lugosi-quotes)

<sup>41</sup> TOP 25 QUOTES BY BELA LUGOSI, A-Z Quotes, [www.azquotes.com/author/9122-Bela\\_Lugosi](http://www.azquotes.com/author/9122-Bela_Lugosi)

<sup>42</sup> TOP 25 QUOTES BY BELA LUGOSI, A-Z Quotes, [www.azquotes.com/author/9122-Bela\\_Lugosi](http://www.azquotes.com/author/9122-Bela_Lugosi)

<sup>43</sup> "I never drink... wine." Dracula (film character) (1931), TOP 25 QUOTES BY BELA LUGOSI A-Z Quotes, [www.azquotes.com/author/9122-Bela\\_Lugosi](http://www.azquotes.com/author/9122-Bela_Lugosi)

<sup>44</sup> Count Dracula; script of the film, "Dracula" (1931). See also Bram Stoker, *Dracula* (1897).

## The IP Time Machine- Travel With Us Back in Time to the Year 1963

### Patently Obvious — “Inventions” of 1963

Audio-cassette tapes  
Child car seat  
Chips Ahoy (cookies)  
Computer mouse  
Disk storage for computer  
Easy-Bake Oven (toy)  
Electronic cigarette  
Hang glider  
Hypertext  
Iron man  
Instant coffee  
Lava lamp (original name, astro lamp)  
Nanoseconds  
Pull tabs for soda cans  
Push button telephone  
Smiley face  
The Uncanny X-Men (Marvel)  
Valium  
Weight Watchers  
ZIP codes

### Intellectual Property of 1963: A Selection From Our Fine Cellar of 60 Years' Vintage

#### *Hit Movies of 1963*

Bye Bye Birdie  
Cleopatra  
Dr. No  
How the West Was Won  
Hud  
It's a Mad Mad Mad Mad World  
The Birds  
The Great Escape  
The Sword in the Stone  
Tom Jones

#### *Hit Television Shows of 1963*

Bonanza  
Candid Camera  
Dr. Kildare  
Gunsmoke  
Lassie  
McHale's Navy  
Perry Mason  
Petticoat Junction  
The Beverly Hillbillies  
The Ed Sullivan Show  
The Dick Van Dyke Show  
The Jack Benny Show  
The Jackie Gleason Show  
The Lucy Show  
The Patty Duke Show  
The Red Skelton Show  
To Tell the Truth  
Walt Disney's Wonderful World of Color  
What's My Line

#### *Radio Hits of 1963*

Another Saturday Night  
Be My Baby  
Blue Velvet  
Blowin' in the Wind  
Da Doo Ron Ron  
Go Away Little Girl  
Heat Wave  
He's So Fine  
If You Wanna Be Happy  
I Will Follow Him  
Puff the Magic Dragon  
Ring of Fire  
Wipe Out

#### *Popular Books of 1963*

Amelia Bedelia (#1) – Parish  
Cat's Cradle – Vonnegut  
Dr. Seuss's ABC: An Amazing Alphabet Book!  
Eichmann in Jerusalem – Arendt  
Encyclopedia Brown, Boy Detective (#1)  
Hop on Pop – Dr. Seuss  
Planet of the Apes – Boule  
The Bell Jar – Plath  
The Best of H.P. Lovecraft – Lovecraft  
The Clocks (Hercule Poirot, #30) – Christie  
The Collector – Fowles  
The Feminine Mystique – Friedan  
The Sailor Who Fell From Grace with the Sea – Mishima  
The Spy Who Came in From the Cold – le Carre  
Collected Poems, 1909-1962 – T.S. Eliot  
Where the Wild Things Are – Sendak



### ***Musical Chairs: The Original Brand Names of Some of Our Favorite American Foods***

<b>Original Name</b>	<b>Current Name</b>
Bib-Label Lithiated Lemon – Lime Soda	7UP
Brad's Drink	Pepsi
Chocolate Crisp	Kit Kat
Danny's Donuts	Denny's
Kandy Kake	Baby Ruth
PaPa Sucker	Sugar Daddy
Star Brand Cream Cheese	Philadelphia Cream Cheese

### ***Whose Name is It Anyway?***

<b>Food or Brand Name</b>	<b>Derivation</b>
Beef Stroganoff	Count Paul Stroganoff
Chef Boyardee	Hector Boiardi
Clark Bar	David Clark
Fettucine Alfredo	Alfredo di Lelio
Fig Newtons	Newton, MA
Junior Mints	Junior Miss (a play)
Monterey Jack	David Jacks
Oysters Rockefeller	John D. Rockefeller
Porterhouse Steak	Martin Morrison's Porterhouse
Salisbury Steak	Dr. J.H. Salisbury
Snickers	A Mars' family horse

## **IPLS Committee Posts**

### ***Meet The IPLS Subcommittee Chairs***

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## **IPLS Member Participation at Monthly Meetings**

The Board of the IPLS has opened up IPLS Monthly Meetings to all Members. Meetings generally are held on the second Monday of each month, from about 11:00 to 11:30 a.m. We then have, at 11:30 a.m., our General Members joining the Meetings as well. The next meeting is January 9, 2023 at 11:30 a.m. Eastern Time.

## **Call to Writers: Articles Wanted**

If you are interested in submitting an article to *The IP Examiner*, we want to hear from you. All manuscripts submitted for consideration should be sent to the Editor, Ira Cohen, Esq. at [icohen@icptrademarksandcopyrights.com](mailto:icohen@icptrademarksandcopyrights.com) IP subject matter only. Article length: 1,000-2,000 words. Once an article is accepted for publication, editorial changes may be necessary.

## Meet Your IPLS Board (2022-2023)



### **Chair: Oliver A. Ruiz**

IPLS Chair Oliver A. Ruiz is a partner with the law firm of Malloy & Malloy, P.L., where he handles intellectual property disputes and litigation matters, as well as trademark prosecution/registration matters. He has been rated AV Preeminent® by Martindale-Hubbell. Mr. Ruiz is admitted to practice law in Florida and North Carolina state courts, as well as, in the United States District Court for the Southern District of Florida, the United States District Court for the Middle District of Florida, and the United States Court of Appeals for the Eleventh Circuit. He also represents clients in U.S. Trademark Trial and Appeal Board proceedings. Mr. Ruiz is a Past President of the Federal Bar Association's South Florida Chapter, is the Chair of the chapter's 2021 Annual Meeting and Convention Committee, and currently serves as an FBA Eleventh Circuit Vice President. He may be reached at 305-858-8000 or by e-mail at [ORuiz@malloylaw.com](mailto:ORuiz@malloylaw.com).



### **Deputy Chair: Olivera Medenica**

IPLS Deputy Chair Olivera Medenica is a member of Dunnington Barthalow & Miller LLP's intellectual property, advertising, art and fashion law, international, and litigation and arbitration practice groups. Olivera started her legal career with a federal clerkship at the U.S. Court of International Trade. For the past 15 years, Olivera has led litigation teams as first chair in state and federal courts, in both New York and New Jersey (admitted in both), and in arbitration and mediation proceedings. She has successfully handled complex commercial litigation matters that require review and analysis of documents in French, and Serbo-Croatian (native speaker). Matters that she has handled include but are not limited to matters involving New York banking laws, shareholder disputes, defamation, fraud, breach of contract, and business torts.

Olivera's intellectual property practice consists of "soft IP": copyright, trademark and trade secrets. In addition to her litigation practice, she prosecutes trademarks before the United States Patent and Trademark Office and first chairs contentious opposition and cancellation proceedings before the Trademark Trial and Appeals Board.

Olivera's fashion law practice consists of advising individuals and companies in the fashion and beauty industries on a variety of matters, including commercial litigation matters, trademark litigation and prosecution, trademark licensing, and serving as outsourced in house counsel for smaller companies unable to maintain permanent in house counsel (e.g. company formation, partnership agreements, consulting and IP licensing agreements, IP and rights clearance on advertising campaigns in print, TV and internet, social media counseling, employment and sales agent agreements, distribution agreements).

Olivera has taught legal writing at Brooklyn Law School and has lectured widely on issues dealing with intellectual property, ecommerce, social media and wearable technology. Lecture engagements have included Lawline.com, the Federal Bar Association, New York County Lawyers' Association, the New York City Bar, the New York State Bar Association, Harvard Law School, Brooklyn Law School, New York Law School, South by Southwest Interactive, Cardozo Law School, the School of Visual Arts, Manhattan School of Music, Direct Marketing Association Conference (Geek-End), and the New York Foundation for the Arts.

She has also written articles for a variety of publications including the New York Law Journal, National Law Journal, Ecommerce Law and Strategy, Brooklyn Journal of International Law, Cardozo Arts and Entertainment Law Journal, Loyola of Los Angeles International and Comparative Law Review and the Internet Law Journal. She also co-authored the American Bar Association's Legal Guide to Fashion Design, and Thomson Reuters' Aspatore, Inside the Minds, 2015 Edition of Navigating Fashion Law.

Olivera is an Advisory Board Member of the New York Law School Innovation Center for Law and Technology, Fashion Law Initiative. She is also the founder of the annual Fashion Law Conference hosted by the Federal Bar Association, in New York and Paris. Both were featured in the Huffington Post, Forbes and Intellectual Property Watch.

Olivera has also co-authored several books in the field of fashion law: *Navigating Fashion Law*, Aspatore's Inside the Minds Series, Thomson Reuters (2015 Edition); the American Bar Association's *Legal Guide to Fashion Design* (2013); *The Business and Law of Fashion and Retail*, Carolina Academic Press (2020); *The Routledge Companion to Copyright and Creativity in the 21st Century*, Taylor & Francis Group (2020); *The Fashion Designer Survival Guide* (chapter covering IP) (2020). Olivera can be reach at [OMedenica@dunnington.com](mailto:OMedenica@dunnington.com)

**Treasurer: Paul D. Supnik**

IPLS Treasurer Paul D. Supnik practices trademark and copyright law in Beverly Hills, California. He is a member of the bars of the Central District of California, and the Ninth and Federal Circuit Courts of Appeal.

He has practiced in the intellectual property area for over 40 years. Paul is a former president of the Los Angeles Copyright Society, and a former chair of the Entertainment and Intellectual Property Section of the Los Angeles County Bar Association. He serves on the ADR Mediation Panel for the Central District of California for copyright and trademark matters and on the Independent Film and Television Alliance/ICDR panel of arbitrators. Paul is a co-author of the publication: *The Essential Guide to Entertainment Law: Intellectual Property* (2018). Paul may be reached at (310) 859-0100 or by e-mail at [paul@supnik.com](mailto:paul@supnik.com)

**Secretary: Marc A. Rapaport**

IPLS Secretary Marc A. Rapaport is a Partner out of Cole, Scott & Kissane, P.A.'s Miami office, where his practice consists primarily of general civil litigation, including the defense of intellectual property (trademark,

copyright and trade secret) claims. Additionally, Mr. Rapaport actively advises clients in connection with the prosecution of trademark and copyright applications before the United States Patent and Trademark Office and the United States Copyright Office. During law school, Mr. Rapaport served on the Executive Board of the St. Thomas Law Review and was awarded "Best Staff Editor" by the Law Review in 2015. Mr. Rapaport was also elected President of St. Thomas's student division of the Federal Bar Association and was selected by the American Bar Association Section of Intellectual Property to serve as a Law Student Reporter for the 32nd Annual Intellectual Property Conference in Arlington, Virginia. Mr. Rapaport is a member of the Florida Bar and is also admitted to practice law in federal court, specifically in the United States District Court for the Southern District of Florida and the Middle District of Florida. He may be reached by telephone at 786 268 6793, or by e-mail at [Marc.Rapaport@csklegal.com](mailto:Marc.Rapaport@csklegal.com)



# Federal Bar Association

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