DONAHUE FITZGERALD ATTORNEYS

Andrew S. MacKay

Managing Partner

1999 Harrison Street
26th Floor
Oakland, CA 94612
(510) 451-3300
amackay@donahue.com



Practice Areas

- Intellectual Property
- Litigation
- Music and Entertainment
- Employment

Overview

Andrew S. MacKay focuses his practice on Intellectual Property enforcement and complex commercial litigation. He has extensive experience representing clients at all stages of litigation, including at trials, appeals, arbitration, and mediation. He serves as the firm's Managing Partner, is the past Co-Chair of the firm's Litigation Practice Group, and is a core member of the firm's Intellectual Property Practice.

He is a leader in the firm's IP Enforcement Practice in fields such as:

- Music (such as the internationally renowned "Happy Birthday To You" class action lawsuit, which recovered $14 million in licensing fees and placed the world's most famous song in the public domain, and the prominent *Wixen Music Publishing, Inc. Spotify* lawsuit on behalf of one of the largest independent music publishing administrators representing over 500 world renowned musical acts, including numerous members of the Rock & Roll Hall of Fame);
- Television and movies (including representing the largest Chinese content producer of online content including television shows and movies);
- Software (including Autodesk, Inc., Adobe Inc., the SIIA, and BSA) and videogames (including Maximum Games, one of the fastest growing woman-owned videogame companies);
- Technology products (such as Dyson, with its revolutionary products such as bladeless fans and hair dryers); and
- Food Products (such as Néstle Dryer's Ice Cream Co., including the Dryer's, H□agen Dazs, and Drumstick).

He is also a leader in the firm's Complex Litigation and Commercial Litigation Groups, representing clients in cases with complicated claims involving corporate issues, such as mergers and acquisitions and shareholder disputes, antitrust, and class actions. These cases involve fields such as:

- Consumer products (including successful representation of Fortune 500 global manufacturer and marketer of consumer and professional products in breach of warranty claims from major acquisition of vitamin manufacturer);
- Public works contracting and engineering (representing one of the largest woman-owned Bay Area public works contractor, engineering firm & supply shop);
- Aftermarket auto glass (representing one of the largest independent wholesalers of aftermarket auto glass); and
- Clothing (representing Fortune 500 national off-price department store retailer).

Representative Engagements

- *Good Morning to You Productions Corp. et al. v. Warner/Chappell Music, Inc.*, C.D. Cal. Case No. CV 13-04460 (co-counsel) – The "Happy Birthday" class action lawsuit was described by the *New York Times* as "a lawsuit for the ages." A leader in Donahue Fitzgerald's successful prosecution of plaintiffs' case, which resulted in the Court granting summary judgment on liability in his clients' favor. The Court ruled that Warner/Chappel Music, Inc., one of the world's top music publishers, had no rights to the song after it had collected millions of dollars in royalties from the song for decades. Shortly thereafter, Warner/Chappel Music, Inc. agreed to a settlement that repaid $14 million in royalties and placed the song "Happy Birthday to You," the world's most popular song, in the public domain.
- Autodesk, Inc. – As litigation and IP enforcement co-counsel managed a program combatting online unauthorized distribution of software products in over fifty successful UDRPs, including:
  - *Autodesk, Inc. v. Domain Admin/Hulmiho Ukolen Poste resante*, Case No. D2015-2014 (WIPO) (autocadd.com domain ordered transferred to complainant)
  - *Autodesk, Inc. v. Marek Jakubczak, The Blue Solutions Corp.*, Case No. D2015-1791 (WIPO) (iautocad.com domain ordered transferred to complainant)
  - *Autodesk, Inc. v. Web Admin, Ebills Online Services*, Case No. D2015-1358 (WIPO) (autocadzone.com domain ordered transferred to complainant)
- Dyson Technology Ltd. – As co-lead U.S. intellectual property enforcement counsel to cease online distribution of thousands of infringing bladeless fans and enforce Dyson's design and utility patents, trademarks, trade dress, and copyrights. Counsel for plaintiffs in *Dyson Limited, Dyson Research Limited, and Dyson Technology Limited v. BHN Intl LLC dba Lava Heat Italia et al.*, Case No. C13-4694 (JSC) (Northern District of CA), in which defendants agreed to cease all distribution of bladeless fans that infringe plaintiffs' trademarks and patents, destroy all inventory, and pay damages.

- Maximum Games, LLC – Lead intellectual property counsel. Matters include IP clearance and protection of video games. Lead counsel for defendant in *CMG Worldwide v. Maximum Games et al.*, Case No. 3:14-cv-05124-JST (Northern District of California), in which plaintiff alleged right of publicity and trademark claims on behalf of General Patton's heirs related to video game; parties entered into confidential settlement after defendant filed anti-SLAPP motion and motion to dismiss.
- Software & Information Industry Association (SIIA) – Co-lead intellectual property enforcement counsel for the principal trade association for the software and digital content industry. Work involves enforcement of SIIA members' copyrights in business software products.
- Monster, Inc. – Intellectual property counsel on trademark matters.
- Nestlé Dryer's Ice Cream Company – *Nestlé Dryer's Ice Cream Company v. Sareen Incorporated, dba Melodee Ice Cream*, C.D. Cal., Case No. 8:19-CV-02411, *r*epresented ice cream company in action for infringement of trademarks and trade dress. Resulted in permanent injunction in favor of plaintiff.

Professional & Community Affiliations

- Member, Intellectual Property, Litigation, and Employment Law Sections, Marin County Bar Association
- Member, Alameda County Bar Association

Recognition

- Listed, WTR1000, *The World's Leading Trademark Professionals*, 2020-present
- Recipient, American Jurisprudence Award for Civil Litigation Trial Practice
- Named, Northern California Super Lawyers, *Super Lawyers*, 2024-present

Bar Admissions

- California

Education

- **J.D.**, University of California, Berkeley, School of Law, 1998
- **B.A.**, Yale University, *summa cum laude*, 1995

Recent Articles/News

- Donahue Fitzgerald Attorneys Named to Billboard's 2026 "Top Music Lawyers" List
- Donahue Fitzgerald Attorneys Named 2026 Super Lawyers and Rising Stars

- Donahue Fitzgerald Recognized in the World Trademark Review's 2026 WTR 1000 Ranking, February 26, 2026
- Donahue Fitzgerald Attorneys Named 2025 Super Lawyers
- Donahue Fitzgerald Recognized in the World Trademark Review's 2025 WTR 1000 Ranking, February 5, 2025
- Donahue Fitzgerald Attorneys Named 2024 Super Lawyers
- Donahue Fitzgerald Recognized in the World Trademark Review's 2024 WTR 1000 Ranking, February 28, 2024
- Donahue Fitzgerald Recognized in the World Trademark Review's 2023 WTR 1000 Ranking, February 13, 2023
- Donahue Fitzgerald Recognized in the World Trademark Review's 2022 WTR 1000 Ranking, March 3, 2022
- Donahue Fitzgerald Recognized in the World Trademark Review's 2020 WTR 1000 Ranking, February 13, 2020

Past Articles/News

- The Corporate Transparency Act (CTA) – Requirement and Rationale, December 29, 2023
- Domain Name Enforcement
- Judge Rules "Happy Birthday To You" Now In Public Domain

Recent Speaking Engagements

- May 01, 2026, AI in Law: Practical Realities, Risks, and Rewards , Law Firm Alliance, Oklahoma City, Oklahoma
- June 22, 2022, Fundamentals of Trademark Law in the Global Marketplace 2022 , Practising Law Institute (PLI), San Francisco, CA
- July 07, 2021, Fundamentals of Trademark Law in the Global Marketplace 2021 , Practising Law Institute (PLI), Live Webcast
- June 30, 2020, Fundamentals of Trademark Law in the Global Marketplace 2020 , Practising Law Institute (PLI), Live Webcast
- July 09, 2019, Fundamentals of Trademark Law in the Global Marketplace 2019 , Practising Law Institute (PLI), San Francisco, CA