

Diversity & Inclusion

Fross Zelnick's commitment to diversity is reflected in our partnership, our lawyers, our staff, and the organizations we support. We believe that people of diverse backgrounds and experience enrich us all and provide perspectives that enable us to better serve our clients.

The Fross Zelnick partnership consists of

- 21 equity partners,

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The Fross Zelnick partnership consists of

- 21 equity partners, 71% of whom fall into at least one diversity category.
- Ten of our partners are women (48%) and five additional partners fall into other diversity categories including Hispanic and LGBT.
- Some of our partners fall into more than one diversity category; for example two of our 10 women partners are Asian and African-American respectively, although we counted each diverse partner only once to arrive at 71%.
- Almost half (three of eight) of the firm's senior counsels and counsels are women and, of our 16 associates, 10, or 63%, are women.

We also enjoy significant diversity among our staff, which represents many cultural backgrounds and countries of origin.

For the fourth year in a row, *Law360* recognized Fross Zelnick in its 2020 annual Glass Ceiling report. We are proud to be #4 on the list of most women in equity partnerships with 20-50 lawyers and #8 overall, for the percentage of female attorneys and equity partners among law firms with fewer than 100 lawyers.

Additionally, as a testament to our commitment to having a diverse and equitable workplace, our firm established the Fross Zelnick Diversity Committee, which includes partners, an associate, and employees from different departments within the firm. While we are proud of our diversity and inclusion at the firm, we know that we cannot rest on our laurels. The work of this inclusive committee will help us find ways to further enhance our environment and enable us to better serve our clients around the world.

Examples of diversity-related activities in which our lawyers and/or firm participate and/or sponsor include The Association of Black Women Attorneys, Sistah Girls, GLINTA (a group formed to recognize and support LGBTQ members of INTA (International Trademark Association) community), ASIPI (Interamerican Association of Intellectual Property), and the First Step job training program associated with the Coalition for the Homeless, which provides assistance to homeless and low-income women seeking living-wage jobs, and from which we have hired support staff.

FZ Celebrates Pride

June has been internationally recognized as Pride Month to honor the Stonewall Uprising of 1969 and celebrate the activism and history of the LGBTQ+ community. Thousands of people annually attend their countries' Pride Parades and wave the rainbow flag. But how did the rainbow flag become the symbol for LGBTQ+ Pride and what intellectual property issues, if any, are presented by use of the rainbow flag in connection with celebrating LGBTQ+ Pride?

San Francisco politician Harvey Milk – the first openly member of the LGBTQ+ community to hold high public office in a major city – commissioned Gilbert Baker in 1978 to create a symbol for the LGBTQ+ community to be used in San Francisco's 1978 Pride Parade. Since 1978, the rainbow flag has become one of the most powerful symbols to identify the LGBTQ+ civil rights movement.

In 2015, the New York Museum of Modern Art (MoMA) added the rainbow flag to its permanent collection as an internationally recognized symbol along with other emblematic icons like the "@" symbol and the International Symbol for Recycling. The Flag was hung in the MoMA on the same date that the U.S. Supreme Court legalized same-sex marriage in the United States in 2015.

But is the rainbow flag currently the subject of any intellectual property protection? The answer appears to be a resounding "no." The clearest evidence comes from the actions of Mr. Gilbert himself as the creator of the rainbow flag. In 1978, an LGBTQ+ advocacy organization attempted to trademark the

rainbow flag. However, Baker was opposed to allowing anyone to trademark the rainbow flag, since Gilbert explained that he had created the flag so it could be used by anyone who wanted to use it for LGBTQ+ supporting purposes and he wanted it to remain free for the public use. Accordingly, Gilbert enlisted the help of Matt Coles, a young LGBTQ+ civil rights lawyer in San Francisco, to oppose the effort by the advocacy organization to trademark the rainbow flag. And they succeeded in their efforts. This is shown by the fact that, today, there are countless businesses, organizations, governments, and individuals that use the rainbow flag or variations of it to promote LGBTQ+ Pride. Such extensive use by unrelated entities and individuals means that the rainbow flag *per se* is non-distinctive and cannot serve as an indicator of source of any one person or company. That is why, other than some corporations registering their logos with the colors of the rainbow flag, nobody owns a trademark registration today consisting only of the rainbow flag by itself.

As to copyright protection, Baker could have sought copyright registration under U.S. law for his creation. Baker's rainbow flag qualifies for copyright protection under U.S. copyright law. Copyrights exist from the moment the work is created. Thus, it can be stated that the rainbow flag is an original artistic work that was fixed to a tangible medium of expression the first time that it was assembled. This protection would be automatically extended to other member states of the Berne Convention. On the other hand, some arguments can be made against Baker's ownership rights over the rainbow flag. For instance, given that Baker received payment from an advocacy group to create the flag, the creation could be considered a product of work-for-hire. In any event – at the end of the day – neither Baker nor his advocacy organization sought to register any copyright in the rainbow flag. Furthermore, Baker never sought to enforce any copyright in the flag over the ensuing decades after its creation. For example, Baker did not take action when the flag was modified/alterd to include other colors and shapes (*i.e.*, arguably derivative works).

Thus, it is safe to say that, as of today, the rainbow flag remains free to use by anyone. The freedom to use the rainbow flag has reinforced its meaning worldwide and it has been adopted by many groups and people to show support for the LGBTQ+ community.