J. David Mayberry

Retired Partner

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Services

Brand Licensing & Related Transactions

Intellectual Property

Intellectual Property Due Diligence

Trademark Litigation

Trademark, Copyright & Advertising

Industries

Retail & Consumer Goods

David Mayberry specializes in trademark, unfair competition and false advertising litigation. He has appeared in courtrooms across the country, including jury and bench trials, handled preliminary injunction and summary judgment motions, and argued numerous appeals. Mr. Mayberry also has handled arbitrations in trademark cases, as well as proceedings before the Trademark Trial and Appeal Board.

According to *Chambers USA*, Mr. Mayberry is a “go to for trademark litigation,” solutions-oriented” and “always seeks a practical outcome for the business in the framework of the law.”

Mr. Mayberry has been listed in *Chambers* as a Leading Lawyer for Business for Intellectual Property: Trademarks, Copyrights and Trade Secrets each year since 2010. He was rated Band 1 in 2017.

According to *World Trademark Review*, Mr. Mayberry is “is sure-footed in the courtroom. The industrious trial lawyer also knows the ins and outs of arbitration and mediation, and is able to devise innovative solutions to disputes.” He “garners the most effusive praise of almost any ranked practitioner for his sensitivity, grasp of nuance and reasoned negotiation style.”

Mr. Mayberry has been ranked in the *WTR 1000* each year since 2013.

Other recognition includes:

-Top 100 Washington, D.C. Super Lawyer" by *Super Lawyers* magazine.

-Named by *Best Lawyers in America*® in 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025 and 2026 for Franchise Law.

-Named to *Legal 500 US* in the area of Trademark Litigation.

-2017-2024 *International Who's Who of Business Lawyers* for Franchise Law.

-AV® rated by Martindale-Hubbell.

Mr. Mayberry has experience in hospitality, food & beverage, retail, fashion, apparel and banking industries.

Mr. Mayberry is a member of the bars of New York, Virginia, North Carolina and the District of Columbia.

Mr. Mayberry builds effective client service teams. For every engagement, he strives to leverage the collective experience of Kilpatrick's more than 100 person trademark team to bring the right combination of resources to bear to achieve client success in a timely and cost-effective manner.

Experience

Mr. Mayberry has appeared in more than 275 federal and state court actions. Some noteworthy experience includes:

Defended The Honey Baked Ham Company against master franchisee which filed a preliminary injunction to block company from optimizing the national website to add a shopping cart. After we argued successfully that the Court should dissolve the TRO and preliminary injunction, the Court granted summary judgment against Plaintiff's anticipatory breach of contract claim. The case was allowed to proceed to trial on client's counterclaim that it had grounds for immediate notice of termination without opportunity to cure under California Franchise Relations Act. *Honey Baked Ham, Inc. v. Honey Baked Ham Company, LLC*, No. 8:19-cv-01528 (C.D. Cal. Filed August 7, 2019).

Defended BB&T and SunTrust which merged to form the nation's six largest bank TRUIST against trademark infringement claims filed by a credit union. After we filed our brief opposing the motion for preliminary injunction, the credit union dismissed the case and clients proceeded with their rebrand. *Truliant Federal Credit Union v. Truist Financial Corp.*, No. 1:19-cv-00601 (M.D.N.C., filed June 17, 2019).

Defended iconic toy brand licensor accused of breaching exclusive license agreement when it selected a business competitor as new licensee prior to the expiration date of exclusive license. We defeated a preliminary injunction motion and received an arbitrator's award of no breach of contract, damages for unpaid royalties and attorney's fees which were confirmed by District Court and affirmed by Eleventh Circuit. *JAKKS Pacific, Inc. v. Original Appalachian Artworks, Inc.*, 718 Fed. Appx. 776 (11th Cir. 2017).

Represented fashion designer Tory Burch in store design trade dress infringement action claiming that director launched a knockoff TORY BURCH store design with company's confidential information in violation of fiduciary duties and contractual obligations. *J. Christopher Burch v. Tory Burch et al.*, No. 7921-CS (Del. Ch., C.A., filed Nov. 5, 2012).

Represented Ikea in trademark infringement action to prevent fan site from publishing a competitor's advertising on IKEA fan site; we also argued successfully for dismissal of anti-trust trademark tying and breach of contract

claims. *Ikeafans, Inc. v. Ikea U.S., Inc.*, No. 1:14-cv-00584 (E.D. Va. filed May 20, 2014).

Represented Sara Lee Corporation in bench trial against leg wear competitor that launched an infringing LEG LOOKS pantyhose to compete against L'EGGS hosiery in food, drug, and mass stores. Defeated a claim that L'EGGS is generic. The Fourth Circuit upheld the Magistrate Judge's recommendation and remanded the case with instructions to enter a permanent injunction. *Sara Lee Corp. v. Kayser-Roth Corp.*, 81 F.3d 455 (4th Cir. 1996).

Represented Hormel Foods Corporation in trade secret action to enforce covenant not to compete; preliminary injunction entered; $2.5 million recovery. *Anson v. Hormel Healthlabs, Inc.*, No. 1:04-CV-1463 (E.D. Va. filed December 6, 2004).

Defended Pepsi-Cola bottler in criminal antitrust price-fixing action. Jury verdict of acquittal. *United States of America v. Pepsi-Cola Bottling Co.*, No. A-CR-90-54, (W.D.N.C 1990).

Defended Hard Rock Cafe, International against trade dress infringement claim that the new REVERB hotel lobby infringed plaintiff's hotel design. After we filed our motion to dismiss, the case was dismissed. *Red Lion Hotels Corporation v. Hard Rock Café International (USA), Inc.*, Civil Action No. 1:17-cv-05252 (S.D.N.Y filed July 7, 2017).

Represented Marriott International, Inc. against "Arlington Resident Court" for infringement of RESIDENCE INN service mark and associated logos. *Marriott Int'l Inc. v. Sunburst Corp.*, No. 07-859 (E.D. Va. filed Apr. 29, 2008).

Represented Opposer at trial before Trademark Trial and Appeal Board. Board refused registration of BALL PARK for beer due to likelihood of confusion with registered mark BALL PARK for franks. *Hygrade Food Products Corp. v. CRB Co.*, Opp. No. 103,744 (T.T.A.B., slip op. August 4, 1999).

Represented miniature golf franchisor in trademark infringement action. Client was awarded summary judgment upholding claim of likelihood of confusion and denying laches and generic defenses. *Putt-Putt, LLC v. Constant Friendship, LLC*, 936 F. Supp.2d 648 (D. Md. 2013).

Represented the holder of a right of first refusal to purchase a trademark against the buyer. We argued successfully that buyer had constructive notice and defeated a motion to dismiss, leading to a successful resolution of the dispute. *Two Men and A Truck International, Inc. v. David Underwood, et. al.*, Civ. Action No. 1-11-cv-598 (E.D. Va. filed June 1, 2011).

Education

University of North Carolina at Chapel Hill School of Law J.D. (1985) *with high honors*

University of North Carolina B.A. (1983) Arts & Laws, *Phi Beta Kappa*

Admissions

North Carolina (1985)

Virginia (2001)

District of Columbia (2003)

New York (2015)

Court Admissions

District of Columbia Court of Appeals (2003)

Supreme Court of New York, Appellate Division, Third Judicial Department (2015)

Supreme Court of North Carolina (1985)

Supreme Court of Virginia (2001)

U.S. Court of Appeals for the Federal Circuit (1989)

U.S. Court of Appeals for the Fourth Circuit (1992)

U.S. Court of Appeals for the Ninth Circuit (2009)

U.S. Court of Federal Claims (2009)

U.S. District Court for the District of Columbia (2004)

U.S. District Court for the Eastern District of Michigan (1996)

U.S. District Court for the Eastern District of North Carolina (2002)

U.S. District Court for the Eastern District of Virginia (2002)

U.S. District Court for the Middle District of North Carolina (1987)

U.S. District Court for the Western District of North Carolina (2000)

U.S. District Court for the Western District of Virginia (2005)

Professional & Community Activities

American Bar Association, Intellectual Property Section, Forum on Franchising, Member

American Inns of Court

District of Columbia Bar Association, Intellectual Property Law Section, Member

International Trademark Association, Member, Advanced TTAB Practice Forum, Past Chair

North Carolina Bar Association, Intellectual Property Section, Member

Virginia Bar Association, Intellectual Property Law Section, Member

Insights

News Releases

Kilpatrick Attorneys Continue to Earn Distinction on Managing Intellectual Property's Prestigious IP Stars List
June 2, 2025

News Releases

37 Kilpatrick Attorneys Named to the 2024 Lexology Index

November 25, 2024

News Releases

Kilpatrick Breaks Record for Number of Attorneys Recognized in 2025 Edition of The Best Lawyers in America®

August 16, 2024

News Releases

Kilpatrick Earns High Rankings in 2024 Legal 500 US

June 25, 2024

News Releases

Kilpatrick Continues Tradition of Impressive Number of Attorneys Named Managing Intellectual Property's IP Stars

June 10, 2024