

## J. David Mayberry

### Partner

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### Services

Brand Licensing & Related  
Transactions  
Intellectual Property  
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. He currently is co-chair of the firm's 100-lawyer Trademark & Copyright Team.

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 and 2020 for Franchise Law.
- Named to *Legal 500 US* in the area of Trademark Litigation.
- 2018 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 Townsend'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

Lead counsel for Original Appalachian Artworks, Inc. against infringement claims by former licensee for breach of an exclusive license agreement that sought to remove our clients iconic CABBAGE PATCH KIDS brand from the market for the holiday season. Defeated a preliminary injunction and then arbitrated the dispute. Arbitrator's award of no breach of contract, and award of unpaid royalties and attorney's fees confirmed by District Court and affirmed by Eleventh Circuit. *JAKKS Pacific, Inc. v. Original Appalachian Artworks, Inc.* 718 Fed. Appx. 776 (11th Cir. 2017).

Lead IP counsel for fashion designer Tory Burch, LLC in suit in Delaware Chancery Court alleging that director competed unfairly against the company by launching a knockoff version of the TORY BURCH brand created with company's confidential information and 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).

Lead counsel for Ikea U.S., Inc. in trademark infringement action to prevent IKEA fan site from publishing advertising for competing retailers on website; 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).

Lead counsel for Sara Lee Corporation in trademark infringement action that LEG LOOKS infringed LEGGS



trademark; injunctive relief recommended; Fourth Circuit upheld recommendation reversing District Court and remanding case with instructions to enter a permanent injunction. *Sara Lee Corp. v. Kayser-Roth Corp.*, 81 F.3d 455 (4th Cir. 1996).

Lead counsel for Hormel Foods Corporation in action to enforce covenant not to compete; successfully argued for preliminary injunction entered; recovered \$2.5 million settlement. *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).

Lead counsel for Hard Rock Cafe, International. Defended trade dress claim that lobby design for new REVERB hotel infringed plaintiff's trade dress. *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).

Lead counsel for Marriott International, Inc. in trademark infringement action claiming all-suite hotels use of "Arlington Resident Court" infringed plaintiff's rights in RESIDENCE INN service mark and associated logos. *Marriott Int'l Inc. v. Sunburst Corp.*, No. 07-859 (E.D. Va. filed Apr. 29, 2008).

Lead counsel for Opposer in Trademark Trial and Appeal Board proceeding. Following trial, Board sustained opposition to register 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).

Lead counsel for franchisor against holdover franchisee in trademark infringement action; summary judgment granted finding likelihood of confusion and defeating laches defense; permanent and permanent injunction entered. *Putt-Putt, LLC v. Constant Friendship, LLC*, 936 F. Supp.2d 648 (D. Md. 2013).

Lead counsel for moving franchisor against competing franchisor. Advanced novel theory of constructive notice to enforce right of first refusal to purchase trademark; defeated motion to dismiss. *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., Arts and Laws (1983) *Phi Beta Kappa*

## Admissions

North Carolina (1985)

Virginia (2001)



District of Columbia (2003)

New York (2015)

### **Court Admissions**

Supreme Court of North Carolina (1985)

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

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

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

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

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

Supreme Court of Virginia (2001)

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

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

District of Columbia Court of Appeals (2003)

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

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

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

U.S. Court of Federal Claims (2009)

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

### **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**

#### [In The News](#)

Kilpatrick Townsend's Trademark Team Earns Top Ranking From World Trademark Review  
February 20, 2020



### [News Releases](#)

Thirty-nine Kilpatrick Townsend Attorneys Named to 2018-2019 *International Who's Who of Business Lawyers*  
October 22, 2019

### [News Releases](#)

Record-Breaking Recognition for Kilpatrick Townsend in *The Best Lawyers in America*® 2020  
August 15, 2019

### [News Releases](#)

Kilpatrick Townsend Receives Top Rankings from 2019 Legal 500 US  
July 10, 2019

### [News Releases](#)

Kilpatrick Townsend Attorneys Named 2019 Managing Intellectual Property IP Stars  
June 17, 2019

### [News Releases](#)

Twenty-Two Kilpatrick Townsend Attorneys Recognized in 2019 Washington, D.C. Super Lawyers  
June 7, 2019

### [News Releases](#)

Kilpatrick Townsend Achieves Top-Tier Recognition from Chambers USA 2019  
May 2, 2019

### [News Releases](#)

Kilpatrick Townsends Trademark Practice Receives Gold Level Recognition  
February 5, 2019

### [News Releases](#)

Kilpatrick Townsend Named 2019 Law Firm of The Year for IP Litigation by U.S. News-Best Lawyers "Best Law Firms"  
November 6, 2018

### [In The News](#)

Kilpatrick Townsend Ranked Among Top-Three in the World for Trademark by 2018 Who's Who Legal



October 8, 2018

[In The News](#)

Record-Breaking Recognition for Kilpatrick Townsend in The Best Lawyers in America® 2019  
August 20, 2018

[News Releases](#)

Kilpatrick Townsend Receives Top Rankings from 2018 Legal 500 US  
June 11, 2018

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Kilpatrick Townsend Achieves Recognition From Chambers USA 2018  
May 11, 2018

[News Releases](#)

Kilpatrick Townsend Attorneys Named 2018 Washington, D.C. Super Lawyers  
May 7, 2018

[News Releases](#)

Forty-Four Kilpatrick Townsend Attorneys Named to 2017 - 2018 International Who's Who of Business Lawyers  
March 19, 2018

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Kilpatrick Townsend's Trademark Practice Receives Gold Level Recognition in the 2018 World Trademark Review 1000  
January 25, 2018

[News Releases](#)

Kilpatrick Townsend Attorneys Named to 2017 International Who's Who of Franchise Lawyers  
December 7, 2017

[News Releases](#)

Kilpatrick Townsend Recognized by Prestigious 2017 Legal 500 US  
October 2, 2017



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Record-Breaking Recognition for Kilpatrick Townsend in The Best Lawyers in America® 2018

August 15, 2017

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Kilpatrick Townsend Achieves Recognition From Chambers USA 2017

May 30, 2017

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Kilpatrick Townsend Attorneys Named 2017 Washington, D.C. Super Lawyers

May 22, 2017

### [News Releases](#)

Kilpatrick Townsend Announces 2016 Kilpatrick Townsend Pro Bono Awards

April 12, 2017

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Kilpatrick Townsends Trademark Practice Receives Gold Level Recognition in the 2017 World Trademark Review 1000

February 9, 2017

### [In The News](#)

Kilpatrick Townsend's Media Report August 19-26, 2016

August 26, 2016

### [News Releases](#)

Kilpatrick Townsend Recognized by Prestigious 2016 Legal 500 US

June 20, 2016

### [News Releases](#)

Kilpatrick Townsend Once Again Achieves Recognition From Chambers USA 2016

May 31, 2016

### [News Releases](#)

Kilpatrick Townsend Attorneys Named 2016 Washington, D.C. Super Lawyers

May 2, 2016



### [News Releases](#)

Kilpatrick Townsend Once Again Receives High Recognition from Chambers Global 2016

April 7, 2016

### [News Releases](#)

Kilpatrick Townsend Receives Top Recognition in 2016 World Trademark Review 1000

January 21, 2016

### [News Releases](#)

Kilpatrick Townsend Once Again Achieves Recognition From Chambers USA 2015

May 22, 2015

### [News Releases](#)

Kilpatrick Townsend Attorneys Named 2015 Washington, D.C. Super Lawyers

April 29, 2015

### [Alerts](#)

Understanding B & B Hardware and Strategic Responses to the Opinion

March 31, 2015

### [News Releases](#)

Kilpatrick Townsend Once Again Receives Top Recognition in 2015 World Trademark Review 1000

February 5, 2015