

J. David Mayberry

Partner

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Services

Trademark Litigation
Trademark, Copyright &
Advertising
Brand Licensing & Related
Transactions
Intellectual Property Due Diligence
Intellectual Property

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, 2020 and 2021 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 client's 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 L'EGGS 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 hotel's 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. (1983) Arts & Laws, *Phi Beta Kappa*

Admissions

District of Columbia (2003)



New York (2015)

North Carolina (1985)

Virginia (2001)

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 Townsend Earns Top Ranking from 2021 World Trademark Review



February 17, 2021

[News Releases](#)

Kilpatrick Townsend Attorneys Achieve 41 Individual Rankings on the 2019–2020 *International Who's Who of Business Lawyers*

November 12, 2020

[News Releases](#)

Kilpatrick Townsend's Trademark Practice Receives Widespread National Acclaim

November 5, 2020

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Record-Breaking Recognition for Kilpatrick Townsend in *The Best Lawyers in America*® 2021

August 20, 2020

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Kilpatrick Townsend Earns Top 2020 Rankings from Leaders League

July 27, 2020

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Kilpatrick Townsend Receives Top Rankings in 2020 *Legal 500 US*

June 23, 2020

[News Releases](#)

Kilpatrick Townsend Attorneys Named 2020 Managing Intellectual Property IP Stars

June 1, 2020

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23 Kilpatrick Townsend Attorneys Recognized in 2020 *Washington, D.C. Super Lawyers*

April 27, 2020

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Kilpatrick Townsend Achieves Top-Tier Recognition from *Chambers USA 2020*

April 24, 2020



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Kilpatrick Townsend Named 2020 Top Trademark Prosecution Firm by Managing Intellectual Property
March 26, 2020

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

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

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

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

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

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

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

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Kilpatrick Townsend's Trademark Practice Receives Gold Level Recognition
February 5, 2019



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Kilpatrick Townsend Named 2019 Law Firm of The Year for IP Litigation by U.S. News-Best Lawyers “Best Law Firms”

November 6, 2018

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

October 8, 2018

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Record-Breaking Recognition for Kilpatrick Townsend in The Best Lawyers in America® 2019

August 20, 2018

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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

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

May 7, 2018

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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

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Kilpatrick Townsend Attorneys Named to 2017 International Who’s Who of Franchise Lawyers



December 7, 2017

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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

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Kilpatrick Townsend Announces 2016 Kilpatrick Townsend Pro Bono Awards

April 12, 2017

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Kilpatrick Townsend's Trademark Practice Receives Gold Level Recognition in the 2017 World Trademark Review 1000

February 9, 2017

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

August 26, 2016

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Kilpatrick Townsend Recognized by Prestigious 2016 Legal 500 US

June 20, 2016



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Kilpatrick Townsend Once Again Achieves Recognition From Chambers USA 2016

May 31, 2016

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

May 2, 2016

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Kilpatrick Townsend Once Again Receives High Recognition from Chambers Global 2016

April 7, 2016

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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

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

April 29, 2015

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Understanding B & B Hardware and Strategic Responses to the Opinion

March 31, 2015

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

February 5, 2015