

## Jason M. Wenker

### Partner

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### Services

Litigation

Complex Commercial Litigation

Product Liability

Trade Secrets

Government & Regulatory

Lease Disputes & Restructuring

### Industries

Technology

Retail & Consumer Goods

Jason Wenker focuses his practice on complex commercial litigation in federal and state courts across the country, with significant experience in multi-count cases involving contract, intellectual property, and technology disputes. Mr. Wenker has handled cases with claims for breach of contract (such as supply agreements, software implementation agreements, and non-disclosure agreements), fraud, unfair trade practices, misappropriation of trade secrets, patent infringement, trademark infringement, and copyright infringement. He works closely with clients from the outset to conduct early case assessments and identify cost-effective dispute resolution strategies. He also assists companies with product safety issues, including evaluating and implementing product recalls in conjunction with the U.S. Consumer Product Safety Commission.

Mr. Wenker was listed by *The Best Lawyers in America*® in 2019, 2020 and 2021 for Commercial Litigation. He was recognized in 2021 and the seven years immediately preceding as a North Carolina "Super Lawyer" for Business Litigation by *Super Lawyers* magazine and was named to the *Triad Business Journal's* "40 Leaders Under 40" list.

### Experience

Lead counsel in complex trade secret misappropriation lawsuit in the North Carolina Business Court against client's former head of research and development. Worked closely with computer forensic experts to uncover misappropriation of 4,000 product formulas and spoliation of evidence. Obtained a temporary restraining order and a preliminary injunction.



Defended transportation company in federal court against eight separate causes of action arising from \$22 million deal, including breach of a non-disclosure agreement and confidentiality obligations, fraud, negligent misrepresentation, and deceptive trade practices. Moved to dismiss seven of the eight claims, which was granted in full, and plaintiff then voluntarily dismissed its remaining claim.

Defended software company in the North Carolina Business Court against claims for breach of contract, negligent misrepresentation, and unjust enrichment related to the replacement of the plaintiff's existing software system. Resolved shortly after early mediation while Defendant's motion to dismiss was pending.

Lead counsel for Krispy Kreme Doughnut Corporation in multi-count litigation brought by plaintiffs alleging that KKDC breached an agreement to permit it to function as its agent to locate a franchisee in the Philippines and conspired with co-defendants to commit fraud and unfair trade practices. The trial court dismissed all claims brought by two individual plaintiffs against KKDC, as well as the sole remaining plaintiff's fraud and unfair trade practices claims. The trial court subsequently granted summary judgment for KKDC on the remaining claims, and the North Carolina Court of Appeals affirmed that decision.

Defended in North Carolina Business Court and Texas State Court multiple former officers and directors of Consert, Inc., the company who acquired Consert, Inc., an investment bank, and other parties against various claims brought by former shareholders of Consert, Inc. including breach of fiduciary duty, fraud, violation of the North Carolina Securities Act, conversion, and violation of North Carolina's Unfair and Deceptive Trade Practices Act related to the merger of Consert, Inc. into another company. The North Carolina Business Court granted 10 defendants' motions to dismiss. The Texas litigation was resolved during a three-week trial.

Represented world's leading health care diagnostics company in federal case involving trade secrets and copyright infringement claims stemming from a software license agreement. Case resolved after mediation before any depositions were taken.

Defended world's leading mattress manufacturer in litigation involving claims for misappropriation of trade secrets and breach of a non-disclosure agreement related to smart mattress technology. Obtained voluntary dismissal early in the discovery process.

Represented owner of the Lilly Pulitzer brand and designs sold under that brand in a copyright dispute with the alleged infringer of multiple designs. Case resolved after mediation.

Represent and advise manufacturers, retailers, distributors, and importers with regard to product safety matters, complying with applicable regulations, and conducting consumer product recalls in conjunction with the U.S. Consumer Product Safety Commission (CPSC). Work closely with the CPSC and independent experts to evaluate potential safety issues and implement corrective action related to a variety of consumer products,



including smartphones, appliances, recreational products, children's products, electrical and battery powered devices, apparel, furniture, and household goods.

Represented emerging smart grid technology company in a lawsuit in Delaware Chancery Court involving a breach of a development and supply agreement's requirement to pay a \$60 million minimum license commitment over five years. Resolved matter on the eve of trial.

Represented Hanesbrands Inc. against contract, fraud, unfair trade practices, and related claims brought by former exclusive distributor in Israel who sought eight-figure damages. Case resolved at mediation.

Represented battery technology company in litigation brought by competitor involving claims of direct and indirect infringement of multiple patents. Case settled by the parties.

Representation of Kennametal Inc., a \$2 billion per year NYSE company, in a patent litigation action that its biggest global competitor filed in the United States District Court for the Western District of North Carolina, alleging that Kennametal infringed certain metal cutting tool patents. Successfully transferred the case to the United States District Court for the Western District of Pennsylvania – Kennametal's home jurisdiction – pursuant to 28 U.S.C. §1404(a) and forced a voluntary dismissal of one of the two patents. Obtained a favorable claim construction ruling in which the remaining patent was found invalid for indefiniteness. The parties later entered an agreement resolving their disputes in this action and other related actions.

Represented Kennametal in a patent litigation matter in the United States District Court for the Western District of Pennsylvania alleging that Kennametal's largest global competitor and related entities infringe claims of two patents owned by Kennametal. Obtained an agreement for one entity to cease infringing one of the patents. The parties were still litigating the other patent, which related to metal cutting tools, at the time of settlement.

Represented Pioneer Hi-Bred International Inc., a subsidiary of E.I. du Pont de Nemours and Co., in false patent marking *qui tam* case filed in the Middle District of North Carolina involving pesticide resistant soybean seeds. Obtained dismissal.

Defended Primo Water Corporation, a national supplier of water dispensers, against claims for trademark infringement, false designation, and unfair competition. Resolved case prior to commencement of discovery.

Represented a supplier of motion furniture mechanisms in a lawsuit brought by a large furniture manufacturer alleging patent infringement, trade secret misappropriation, breach of contract, and tortious interference with business relations. Transferred case from the Northern District of Texas to the Middle District of North Carolina, secured withdrawal of patent claim, and resolved matter before engaging in e-discovery or conducting depositions.



Served as lead counsel on behalf of E. I. du Pont de Nemours and Company against claims for misappropriation of trade secrets, unfair trade practices, fraud, breach of a non-disclosure agreement, and patent infringement related to printing solvent formula, and counter-sued for patent infringement and unfair trade practices. Obtained summary judgment in full on plaintiff's claims and an injunction in the countersuit.

### **Education**

University of North Carolina School of Law J.D. (2001)

University of North Carolina B.A. (1997) History

### **Admissions**

Georgia

North Carolina

### **Court Admissions**

North Carolina Business Court

U.S. Court of Appeals for the Eleventh Circuit

U.S. Court of Appeals for the Fourth Circuit

U.S. District Court for the Eastern District of North Carolina

U.S. District Court for the Middle District of North Carolina

U.S. District Court for the Northern District of Georgia

U.S. District Court for the Western District of North Carolina

### **Professional & Community Activities**

Crosby Scholars, Board Chair

Winston-Salem Chamber of Commerce, Board Member

Goodwill Industries of Northwest North Carolina, Board Member

Chief Justice Joseph Branch Inn of Court, Barrister

21st Judicial District Bar Association, Bar Candidate Committee, Member and past Chair

Forsyth County Bar Association, Member

Leadership North Carolina, Class of 2013

Cook Elementary School, Volunteer

Habitat for Humanity, Volunteer

Centenary United Methodist Church, Staff Parish Relations Committee, Member (Former)



## Insights

### [News Releases](#)

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

August 20, 2020

### [Alerts](#)

North Carolina Extends Limited, Civil Immunity to Any Individual or Entity and Extends Immunity for Six Months After the COVID-19 Emergency Ends

July 3, 2020

### [News Releases](#)

36 Kilpatrick Townsend Attorneys Named to the 2019 North Carolina Pro Bono Honor Society

May 28, 2020

### [Alerts](#)

The North Carolina Legislature Grants Limited, Civil Immunity to Certain Companies (But What is the Impact of Subsequent Executive Orders?)

May 18, 2020

### [Alerts](#)

Impact of the COVID-19 Pandemic on Force Majeure Defenses Under Illinois Law

May 4, 2020

### [Alerts](#)

Impact of the COVID-19 Pandemic on Contract Defenses Under Washington Law

May 4, 2020

### [Alerts](#)

Impact of the COVID-19 Pandemic on Impossibility, Impracticability, and Frustration of Purpose Contract Defenses under North Carolina Law

April 24, 2020

### [Alerts](#)

Impact of the COVID-19 Pandemic on Force Majeure Defenses Under Florida Law

April 22, 2020



### [Alerts](#)

Impact of the COVID-19 Pandemic on Force Majeure Defenses Under Colorado Law

April 22, 2020

### [Alerts](#)

Impact of the COVID-19 Pandemic on Force Majeure Defenses Under California Law

April 22, 2020

### [Alerts](#)

Impact of the COVID-19 Pandemic on Force Majeure Defenses Under Delaware Law

April 17, 2020

### [Alerts](#)

Impact of the COVID-19 Pandemic on Force Majeure Defenses Under North Carolina Law

April 13, 2020

### [Alerts](#)

Practical Considerations for Manufacturers Pivoting to PPE Production to Combat COVID-19 Pandemic

March 25, 2020

### [Perspectives](#)

5 Key Takeaways | Strategies for Protecting Trade Secrets

March 9, 2020

### [News Releases](#)

Kilpatrick Townsend Attorneys Named 2020 North Carolina Super Lawyers

February 27, 2020

### [News Releases](#)

Record-Breaking Recognition for Kilpatrick Townsend in *The Best Lawyers in America*® 2020

August 15, 2019

### [Perspectives](#)

KT Client Success | Trade Secret Misappropriation and Related Patent Prosecution Enjoined

February 21, 2019



### [News Releases](#)

Kilpatrick Townsend Attorneys Named 2019 North Carolina Super Lawyers  
January 28, 2019

### [In The News](#)

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

### [News Releases](#)

Kilpatrick Townsend Attorneys Named 2018 North Carolina Super Lawyers  
February 6, 2018

### [News Releases](#)

Kilpatrick Townsend Announces 2016 Kilpatrick Townsend Pro Bono Awards  
April 12, 2017

### [News Releases](#)

Kilpatrick Townsend Attorneys Named 2017 North Carolina Super Lawyers  
January 30, 2017

### [News Releases](#)

Kilpatrick Townsend Attorneys Named 2016 North Carolina Super Lawyers  
January 15, 2016

### [News Releases](#)

Kilpatrick Townsend Attorneys Named 2015 North Carolina Super Lawyers  
January 28, 2015