

## James F. Bogan III

### Partner

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### Services

Antitrust Litigation  
Appellate Litigation  
Class Action Defense  
Complex Commercial Litigation  
Cybersecurity, Privacy & Data  
Governance  
Government & Regulatory  
Litigation  
Product Liability  
Trade Secrets

### Industries

Health & Life Sciences  
Media & Entertainment  
Technology

Jay Bogan concentrates his practice on complex commercial litigation, with particular emphasis in class action, business tort, and civil RICO cases. He is the leader of the Kilpatrick Townsend Class Action Team and the Editor of the KT Class Action Blog. He has substantial experience representing clients before federal and state trial and appellate courts and arbitration tribunals, as well as coordinating the efforts of in-house and outside lawyers in significant multi-jurisdictional litigation. He is the past Chair of the firm's Technology and Trade Secret Litigation Team, the past Chair of the State Bar of Georgia's Appellate Practice Section, and the past Chair of the Business Torts & Civil RICO Committee (American Bar Association, Section of Antitrust Law).

Mr. Bogan was named to *Georgia Trend's* "Legal Elite" in 2008 for Business Law and again in 2012 for Technology Law. He is listed in the 2009 and 2010 editions of *Chambers USA: America's Leading Lawyers for Business* for Appellate and General Commercial Litigation and again in the 2013, 2014, 2015, 2016, 2017 and 2018 editions for General Commercial Litigation. Mr. Bogan is listed as #1 in the 2011 and 2012 editions of *Chambers USA: America's Leading Lawyers for Business* for General Commercial Litigation. He has been recognized as a Georgia "Super Lawyer" in the areas of General Litigation and Class Action/Mass Torts in 2009 and for Business Litigation in 2019 and 2020 and also in 2017 and the eight years immediately preceding by *Super Lawyers* magazine. Mr. Bogan is recognized in the 2018 and the nine years immediately preceding editions of *The Best Lawyers in America*<sup>®</sup> for Commercial Litigation and in the 2019 and 2020 editions for



Appellate Practice, Commercial Litigation, Intellectual Property Litigation, and Technology Law. Mr. Bogan was recommended in 2017 and the five years immediately preceding by *Legal 500 US* in the area of Trade Secret Litigation. He is AV<sup>®</sup> rated by Martindale-Hubbell.\*

\*CV, BV, and AV are registered certification marks of Reed Elsevier Properties Inc., used in accordance with the Martindale-Hubbell certification procedure's standards and policies.

## **Experience**

We represent YP in a class action in federal district court in San Francisco (Northern District of California), which is now pending before the Ninth Circuit Court of Appeals. We were successful in obtaining summary judgment on the class representative's claims on the ground that plaintiff did not suffer a cognizable injury.

Successfully represented two individuals and obtained a significant jury verdict on civil RICO, fraud and libel claims. The jury trial lasted four weeks and the case resulted in three separate appeals (to the Georgia Court of Appeals and Georgia Supreme Court), resulting in the creation of significant new precedent under the Georgia RICO Act.

Represented Internet flower retailer in a class action advancing "e-commerce" consumer fraud claims under California's unfair trade practices acts. The case raised complex jurisdictional and appellate issues under the Class Action Fairness Act while the case was pending in the U.S. District Court for the Central District of California. Also, to defend the class action, we developed survey evidence showing that only a small percentage of putative class members would have been "confused" or otherwise "deceived" by the alleged unfair trade practices. The case was ultimately settled on terms favorable to the client in a nationwide class action settlement approved by the Los Angeles County Superior Court.

The firm served as lead counsel and scored a major victory for BellSouth Advertising & Publishing Corporation in a class action filed against the company by South Florida advertisers, seeking refunds for the time period in which delivery of the 2005-2006 directories had been allegedly delayed when Hurricane Wilma struck South Florida. The case was originally filed in federal district court in Miami but was transferred to Atlanta on our motion to enforce the mandatory forum selection clause in the terms and conditions of the advertisers' contracts. On October 28, 2008, the Eleventh Circuit Court of Appeals affirmed the Northern District of Georgia's decision denying class certification and granting summary judgment to the company. This victory was significant because similar state-wide class actions against AT&T in California had been certified.

The firm served as lead counsel for EyeWonder, Inc. in the Southern District of New York to enforce restrictive covenants when its former head of Western regional sales left to join the Los Angeles office of EyeWonder's



arch-competitor, New York-based EyeBlaster, Inc. EyeWonder also initiated an arbitration proceeding in Atlanta. The Southern District of New York granted EyeWonder a preliminary injunction in aid of arbitration, preventing the former employee from soliciting EyeWonder's customers. After nearly a year of contentious proceedings, the arbitrator ruled in EyeWonder's favor, not only enjoining the former employee from breaching the restrictive covenants in his agreement, but also ordering him to pay all of EyeWonder's attorneys' fees and costs incurred in the arbitration. *Eyewonder, Inc. v. Abraham*, Case No. 08-03579 (S.D.N.Y. Sept. 3, 2010).

Achieved a major victory by defeating class certification in a significant class action filed against YellowPages.com. This result was preceded by procedural victories in terms of having separately-filed class actions transferred to the Southern District of New York, and was followed by a ruling by the Second Circuit denying interlocutory appellate review of the district court's order denying class certification. The first of these cases, filed in New Jersey state court, was removed by YellowPages.com to the District of New Jersey. Two follow-on class actions were then filed against YellowPages.com in the Southern District of California. As for the New Jersey case, we persuaded the New Jersey federal district court to transfer the action to the Southern District of New York, enforcing a forum selection clause in the Terms and Conditions between YellowPages.com and its advertising customers. Kilpatrick Townsend was then able to persuade the Southern District of California to transfer the follow-on class actions to the Southern District of New York, on (among other grounds) the "interest of justice" element of the federal venue statute. Through such procedural moves, we were able to achieve an "MDL-like" consolidation of separate but related class action lawsuits filed in different federal district courts. On the class certification issue, the district court ruled that YellowPages.com's sales practices and its individual customers' experiences were too varied to support class certification. The cases remain pending before the Southern District of New York. *Kowalski v. YellowPages.com*, No. 10 Civ. 7318 (PGG), 2012 WL 1097350 (S.D.N.Y. filed Mar. 31, 2012) (order denying class certification).

The firm represented three foreign nationals who were detained by the United States government at the Guantánamo Bay detention facility. On behalf of the detainees, the firm engaged in multidisciplinary actions across numerous venues, including habeas corpus litigation before the D.C. District Court, administrative proceedings before the "Interagency Review Team," and litigation before the U.S. Court of Appeals for the District of Columbia. and U.S. Supreme Court. We also engaged in negotiations with foreign governments and non-governmental organizations in order to secure the resettlement of detainees who have been approved for release from the detention facility. *In re Guantánamo Bay Detainee Litig.*, Misc. No. 08-0442 (D.D.C. filed July 2, 2008).

Obtained a major victory for the firm's client Southern Mills d/b/a TenCate Protective Fabrics in a complex arbitration proceeding involving a contract for the sale of flame-resistant (FR) fabric for the manufacture of FR battle dress uniforms for the U.S. Military. Southern Mills had contracted with an entity named Insight Holding

Group (IHG) to promote the sale of Southern Mills' FR fabric to the U.S. Military and had obligated itself to pay IHG almost \$20 million on a going-forward basis in commissions for the sale of those FR fabrics. Southern Mills alleged, however, that it was misled into entering the contract by IHG's CEO concerning the nature of his relationship with Southern Mills' largest customer, and we sought to relieve Southern Mills of any future obligations under the contract. A panel of arbitrators agreed with Southern Mills and rejected IHG's claim for over \$17 million under the Southern Mills/IHG contract, based on the contractual doctrines of impossibility of performance and frustration of purpose. After the panel entered its award, IHG filed an independent action in the Eastern District of Virginia seeking to vacate the award. We were successful in persuading the Eastern District of Virginia to transfer the action to federal district court in Atlanta. The Atlanta federal court rejected IHG's motion to re-transfer the action to the Eastern District of Virginia and proceeded to confirm the arbitration award, which was affirmed on appeal by the Eleventh Circuit.

Represented Amerisave Mortgage Corporation in a dispute with a former employee, who sued the company for violations of Georgia RICO, defamation, and intentional infliction of emotional distress arising from his termination by Amerisave. Amerisave prevailed on a motion to dismiss all claims at the trial court level, and the dismissal was affirmed by the Georgia Court of Appeals. The Georgia Supreme Court ultimately affirmed the dismissal of the Georgia RICO and emotional distress claims but reinstated the defamation claim, which was ultimately settled on terms favorable to Amerisave.

## **Education**

University of Virginia School of Law, J.D. (1989)

University of Virginia, B.A., English (1985) *high distinction*

## **Admissions**

Georgia (1989)

## **Court Admissions**

U.S. Supreme Court

District of Columbia Court of Appeals

U.S. Court of Appeals for the Second Circuit

U.S. Court of Appeals for the Fifth Circuit

U.S. Court of Appeals for the Ninth Circuit

U.S. Court of Appeals for the Eleventh Circuit

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

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



Georgia Supreme Court

Georgia Court of Appeals

Superior Court of Fulton County

### **Professional & Community Activities**

American Bar Association, Former Chair of Section of Antitrust Law's Business Torts & Civil RICO Committee

State Bar of Georgia, Former Chair of Appellate Practice Section

State Bar of Georgia, Former Chair of Eleventh Circuit Appellate Practice Institute

American Bar Foundation, Fellow

Litigation Counsel of America, Fellow

Chattahoochee National Park Conservancy, Board Member

### **Insights**

#### [News Releases](#)

Kilpatrick Townsend Attorneys Honored With 2020 JD Supra Readers' Choice Awards for Thought Leadership  
May 1, 2020

#### [Publications](#)

Boeing Case Overcharge Ruling May Not Survive If Appealed  
March 10, 2020

#### [News Releases](#)

Kilpatrick Townsend Attorneys Named 2020 Georgia Super Lawyers  
March 6, 2020

#### [News Releases](#)

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

#### [Publications](#)

Class Arbitration Is Almost Dead  
April 26, 2019

#### [Publications](#)



Where Trade Secret Preemption Meets Insurance Coverage  
March 28, 2019

#### [Publications](#)

Consumer Fraud Takeaways from 7th Circuit 'Zestimates' Ruling  
March 8, 2019

#### [News Releases](#)

Kilpatrick Townsend Achieves Recognition for 2019 Georgia Super Lawyers  
February 28, 2019

#### [Publications](#)

Class Arbitration – Can It Even Work?  
December 1, 2018

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

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

#### [News Releases](#)

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

#### [News Releases](#)

Kilpatrick Townsend Once Again Achieves Recognition for 2018 Georgia Super Lawyers  
February 28, 2018

#### [News Releases](#)

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

#### [News Releases](#)

Record-Breaking Recognition for Kilpatrick Townsend in The Best Lawyers in America® 2018  
August 15, 2017



### [News Releases](#)

Kilpatrick Townsend Achieves Recognition From Chambers USA 2017

May 30, 2017

### [Publications](#)

Arbitration Agreements In Calif. Require Consumer Assent

March 15, 2017

### [News Releases](#)

Kilpatrick Townsend Once Again Achieves Recognition for 2017 Georgia Super Lawyers

February 28, 2017

### [News Releases](#)

Kilpatrick Townsend Launches KT Class Action Blog

January 19, 2017

### [Alerts](#)

A Software Services Agreement Checklist For Companies

December 30, 2016

### [News Releases](#)

Kilpatrick Townsends Jay Bogan Appointed to the Board of the Chattahoochee Parks Conservancy

December 15, 2016

### [In The News](#)

Kilpatrick Townsend's Media Report September 2-8, 2016

September 9, 2016

### [News Releases](#)

Kilpatrick Townsend Earns Record-Breaking Recognition in Annual Best Lawyers in America 2017

August 16, 2016

### [In The News](#)

Kilpatrick Townsend's Media Report June 24-30, 2016

July 1, 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

### [Alerts](#)

Supreme Court Rules that Bare Statutory Violation without Other Concrete Harm Cannot Provide Federal Court Standing

May 17, 2016

### [Alerts](#)

Recent Ruling Creates Potential Liability For Use of Common Contractual Terms

May 5, 2016

### [Alerts](#)

Federal Court Rules that Terms & Conditions can Provide Express Consent to Receiving Text Messages Under Telephone Consumer Protection Act

March 8, 2016

### [Alerts](#)

U.S. Supreme Court Rules Pick-Off "Offer" to Class Representative Does Not Moot Claim, But Pick-Off "Payment" Might Succeed

January 20, 2016

### [News Releases](#)

Kilpatrick Townsend Earns Record-Breaking Recognition in Annual Best Lawyers in America 2016

August 19, 2015

### [News Releases](#)

Kilpatrick Townsend Recognized by Prestigious 2015 Legal 500 US

July 15, 2015

### [News Releases](#)





Kilpatrick Townsend Once Again Achieves Recognition From Chambers USA 2015  
May 22, 2015

#### [Publications](#)

Kilpatrick Townsend & Stockton LLP Intellectual Property Desk Reference-7th Edition  
May 1, 2015

#### [Publications](#)

Choosing Between Trade Secret and Patent Protection  
May 1, 2015

#### [News Releases](#)

Kilpatrick Townsend Once Again Achieves Recognition for 2015 Georgia Super Lawyers  
February 26, 2015