



Jason M. Wenker

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Services

Complex Commercial Litigation; Trade Secret; Patent Litigation; Consumer Product Safety

Industries

Technology; Retail & Consumer Goods; Apparel, Accessories & Luxury Goods; Home Furnishing

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 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.

During his more than 15 years of practice, Mr. Wenker has handled a variety of complex litigation matters for companies including E.I. du Pont de Nemours, LabCorp, Krispy Kreme Doughnut Corporation, Hanesbrands Inc., Tempur Sealy, and Kennametal Inc. and has successfully resolved litigation matters via summary judgment, mediated settlements, arbitration, and trial. He has been recognized as a North Carolina "Super Lawyer" by *Super Lawyers* magazine in 2014, 2015, 2016, and 2017 and was named to the *Triad Business Journal's* "40 Leaders Under 40" list.

Experience Highlights

Defense of technology company related to software implementation dispute

Defended Verint Americas Inc. in the North Carolina Business Court against claims brought by the City of Charlotte for breach of contract, negligent misrepresentation, and unjust enrichment related to the replacement of the City's existing 311 software system with a new Customer Relationship Management system. Resolved shortly after early mediation while Defendant's motion to dismiss was pending. *City of Charlotte v. Verint Americas Inc.*, 16-CVS-14056 (N.C. Sup. Ct. filed Aug. 4, 2016).

Voluntary dismissal of trade secrets and non-disclosure agreement case

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. *Blue Ocean Laboratories, Inc. v. Tempur Sealy Int'l, Inc.*, No. 1:15-cv-00331 (M.D.N.C. filed Apr. 20, 2015).

Summary judgment for E.I. du Pont de Nemours and Co.

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. *E.I. du Pont de Nemours and Co. v. NUPRO Technologies, Inc.*, No. 1:08-cv-00199 (M.D.N.C. filed Mar. 25, 2006); *NuPro Techs., Inc. v. E.I. Du Pont de Nemours and Co.*, No. 06-1061 (M.D.N.C. filed Dec. 11, 2006).

Multi-count litigation involving overseas Krispy Kreme franchisee

Representing Krispy Kreme Doughnut Corporation in litigation brought by plaintiffs who claim that Krispy Kreme breached an agreement to permit them to function as its agent to locate a franchisee in the Philippines and also committed unfair trade

practices and other business torts. The Court dismissed all claims brought by two individual plaintiffs against Krispy Kreme, as well as the sole remaining plaintiff's fraud and unfair trade practices claims. Summary judgment motion on remaining claims is pending. *K2 Asia Ventures v. Krispy Kreme*, 09 CVS 2766 (Forsyth County filed Apr. 7, 2009).

Defense of multiple parties in shareholder suits arising out of a merger

Defending 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 has granted 10 defendants' motions to dismiss, with two motions remaining to be heard. Cases pending. *Worley v. Moore*, 15 CVS 001316 (N.C. Super. Ct. filed Nov. 9, 2015); *Bennett v. Moore*, 2017CI05787 (Bexar County, Texas filed March 29, 2017).

False patent marking case for Pioneer Hi-Bred International Inc.

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.

United States Consumer Product Safety Commission recalls and related safety matters

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 toys, electrical and battery powered devices, apparel, furniture, and household goods.

Defense of LabCorp against trade secrets and copyright infringement claims

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. *System Solutions v. LabCorp, et al.*, 4:15-cv-00690 (W.D. Mo. filed Sept. 9, 2015).

Global resolution of patent infringement litigation for Kennametal Inc.

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. *Sandvik Intellectual Prop. AB v. Kennametal Inc.*, No. 09-0163 (W.D.N.C. filed Apr. 27, 2009); *Sandvik Intellectual Prop. AB, v. Kennametal Inc.*, No. 10-654 (W.D. Pa. filed May 13, 2010).

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. *Kennametal Inc. v. Sandvik, Inc. d/b/a Sandvik Coromant Co., et al.*, No. 09-cv-00857, (W.D. Pa. filed June 29, 2009).

Served as global coordinating counsel in a patent litigation action that Sandvik filed in the High Court of Justice, Chancery Division, Patents Court, United Kingdom. After a bench trial, the Court found Sandvik's patent invalid for indefiniteness, lack of enablement, and obviousness. *Sandvik Intellectual Property AB, Claimant and Kennametal UK Limited, Kennametal Inc., Kennametal Europe GMBH*, Defendants; Claim No. HC 10 C02090, High Court of Justice, Chancery Division, Patents Court.

Early resolution of trademark infringement dispute

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. *The Meyer Company v. Primo Water Corp.*, 17-CV-357 (N.D. Ohio filed Feb. 21, 2017).

Automotive product liability litigation

Served as regional defense counsel for automobile manufacturers in dozens of federal and state court cases across the Southeast alleging personal injury, including crashworthiness, first-collision, failure-to-warn, failure-to-repair, and warranty claims.

Early resolution of complex intellectual property litigation against a furniture manufacturer

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. *American Leather Operations, et al. v. Ultra-Mek, Inc.*, No. 3:13-cv-04496-N (M.D.N.C. filed Nov. 8, 2013).

Product liability defense for leading pharmaceuticals manufacturer *

Served as national counsel for leading pharmaceuticals manufacturer in multi-district litigation and individual product liability lawsuits alleging that the client "failed to warn" of discontinuation symptoms from cessation of antidepressant. Obtained summary judgment for the client in California state court based on lack of causation.

Breach of software development agreement

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. *Itron, Inc. v. Consert, Inc.*, No. 7720-VCL (Del. Ch. filed July 25, 2012).

Copyright infringement dispute involving apparel and accessories

Representing owner of the Lilly Pulitzer brand and designs sold under that brand in a copyright dispute with the alleged infringer of multiple designs. Case pending. *Dazzle Up LLC v. Sugartown Worldwide LLC*, No. 17-CV-15 (M.D.N.C. filed Jan. 6, 2017).

Breach of contract trial for Integrated Solutions International LLC

Successfully represented Integrated Solutions International LLC, a system integrator and software developer, in a trial for breach of contract. Case won by jury verdict.

Defense of battery technology company in patent infringement litigation

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

Defense of transportation company in nine-count lawsuit involving the sale of railcars

Representing XPO Intermodal in a suit brought by the purchaser of 340 railcars asserting eight separate claims including breach of a non-disclosure agreement and confidentiality obligations, fraud, negligent misrepresentation, and violation of the Georgia Uniform Deceptive Trade Practices Act. Motion to dismiss pending. *Infinity Transportation III LLC v. XPO Intermodal, Inc.*, No. 1:17-cv-1123 (N.D. Ga. filed Mar. 28, 2017).

Defense of manufacturer in mass tort lawsuit *

Represented manufacturer in mass tort lawsuit involving 71 plaintiffs claiming exposure to toxic chemicals at chlor-alkali plant.

Defense of clothing manufacturer against contract and tort claims

Represented international apparel manufacturer 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.

Litigation for pharmaceutical manufacturer *

Represented pharmaceutical manufacturer as national co-counsel in more than 50 individual lawsuits and product liability class actions across the country claiming over-promotion of, and addiction to, prescription pain medicine. Obtained summary judgment in West Virginia state court based on plaintiff's unlawful conduct.

*Experience gained by attorney prior to joining Kilpatrick Townsend

Publications, Articles and Speaking Engagements

New CPSC Product-Testing Rules Take Effect February 8

AAEI Alert newsletter (American Association of Exporters and Importers), January 21, 2013

Companies Should Take Steps Now to Ensure Compliance with New Children's Products Regulations

Kilpatrick Townsend & Stockton LLP Legal Alert, December 17, 2012

CPSC Launches Publicly Accessible Database of Consumer-Generated Safety Reports; Rules Give Companies Only 10 Days to Comment on Reports Before Publication

Kilpatrick Townsend & Stockton LLP Legal Alert, April 18, 2011

Federal Circuit Raises Stakes in Patent "False Marking" Cases

Kilpatrick Townsend & Stockton LLP Legal Alert, January 07, 2010

'Qualcomm' Ruling Shakes up the Litigation World

National Law Journal, March 10, 2008

Professional & Community Activities

Winston-Salem Chamber of Commerce, Board Member

Crosby Scholars, Board Member and Chair of Governance Committee
Wake Forest University Baptist Medical Center, Board of Visitors
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)

Education

University of North Carolina School of Law, J.D. (2001)
University of North Carolina, B.A., History (1997)

Bar Admissions

Georgia
North Carolina

Admissions

U.S. Court of Appeals for the Fourth Circuit
U.S. Court of Appeals for the Eleventh 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 Western District of North Carolina
North Carolina Business Court
U.S. District Court for the Northern District of Georgia