

## David J. Stewart

Partner

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David Stewart is a member of Alston & Bird's Intellectual Property – Trademark & Copyright Group. He concentrates his practice on trademark, copyright, trade secret, and advertising litigation and counseling.

David is ranked Gold in the 2021 edition of the *Word Trademark Review 1000*. He is featured in the International Edition of *Who's Who Trademarks* and has been listed in *Chambers USA: America's Leading Lawyers for Business* and *The Best Lawyers in America*® since 2009. *Best Lawyers*® named David "Lawyer of the Year" for 2018 in the area of Copyright Law. He has been recognized as an "IP Star" by *Managing Intellectual Property* magazine and has been recognized by *Super Lawyers* since 2004.

David received an A.B. degree in English literature from Wabash College in 1985, graduating summa cum laude. He received his law degree in 1990 from Vanderbilt University, where he served as an editor of the *Vanderbilt Law Review*. Before law school, he worked as a computer systems engineer for the Allison Gas Turbine division of General Motors Corporation in Indianapolis.

### **Representative Experience**

- Represented a large health care facility in a three-week jury trial of a trademark, copyright, and Digital Millennium Copyright Act case in federal court in Tampa that resulted in awards of permanent injunctive relief, substantial damages and recovery of attorneys' fees.
- Defended a national beauty retailer in a three-week jury trial involving claims of trademark infringement related to the trade dress and trademark of a private label beauty product.
- Secured summary judgment for a national restaurant chain in a trademark infringement lawsuit in federal court in Portland, OR in which the plaintiff sought a nationwide injunction against use of the company's mark.
- Served as lead counsel for a unit of a major international pharmaceutical company in defense of claims of false advertising asserted by its largest competitor. Defeated four motions for preliminary injunction after an extensive evidentiary hearing. The case settled favorably to the client after a successful motion for protective order that significantly limited the scope of the plaintiff's discovery efforts.
- Served as lead counsel for a major manufacturer of insulated bottles in an anticounterfeiting action in Oregon federal court against more than 70 Chinese counterfeiters. The client was awarded temporary, preliminary, and permanent injunctions and more than \$1 million in damages.
- Served as trial counsel in federal court in Connecticut in the trial of novel trademark ownership and first use issues involving the mark for a successful self-storage chain.
- Secured a temporary restraining order (TRO) and preliminary injunction on behalf of one of the world's largest hospitality companies against a former franchisee who refused to de-identify following the expiration of his franchise agreement.

- Defended a major tire manufacturer in defense of false advertising claims asserted by its most significant competitor before the National Advertising Division (NAD) of the Council of Better Business Bureaus related to claims of comparative product superiority in national broadcast advertisements.
- Represented a major national automotive parts retailer in the defense of copyright infringement claims filed in federal court in Las Vegas related to Linux, an open source operating system.
- Represented a major international manufacturer of kitchen equipment in a false advertising claim before the NAD against one its largest competitors regarding superiority claims the competitor was making regarding new food storage containers. The NAD and, on appeal, NARB, ruled in the client's favor on all claims.
- Prosecuted a motion for a TRO against a candidate for U.S. Senate who was using a character in his broadcast advertising that closely resembled a character used by a major international insurance company in its own advertising.
- Defended a major film production company in a copyright and trademark lawsuit involving the motion picture *Midnight in the Garden of Good and Evil* in which the Eleventh Circuit became the first federal circuit court to rule that an artist cannot acquire trademark rights in an artistic style.
- Served as lead trial counsel for a worldwide sports apparel company in a cyberpiracy case filed in South Carolina that was the first case cited by the U.S. Senate as support for its passage of the Anticybersquatting Consumer Protection Act (ACPA).
- Represented a cable news network in connection with several precedent-setting domain name cases in the Eastern District of Virginia, including a case in which the court ruled that jurisdiction is proper in the district over a domain name registered in China by a Chinese citizen on the grounds that the registry for the domain name is located in the forum.
- Represented a hotel and casino operator in a case affirmed by the Ninth Circuit that was the first case in which a federal appellate court affirmed service of process by email.
- Represented numerous Fortune 100 companies in connection with search engine keyword hacking, spam email, denial of service, phishing and other Internet-related cases.
- Represented a major international hotel chain in litigation challenging the legality of Internet pop-up and pop-under advertising campaigns served by The Gator Corporation.
- Defended a highly successful comparative broadcast advertisement for a national mattress manufacturer despite network and NAD challenges from its leading competitor resulting in the ad being able to stay on air.
- Prosecuted more than 150 cases under ICANN's Uniform Domain Name Dispute Resolution Policy (UDRP).
- Serving as outside trademark enforcement counsel to numerous Fortune 500 companies, successfully resolving more than a thousand contested matters without the need for litigation.
- Providing regular advertising counseling and advice to numerous Fortune 500 companies.

## ***Publications & Presentations***

### ***Publications***

- "Supreme Court Holds That Juries Decide Issues of Trademark Tacking," *Intellectual Property & Technology Law Journal*, Vol. 27, No. 4, April 2015.

- “Supreme Court Holds That Broad Covenants Not to Sue Divest District Courts of Jurisdiction to Hear Counterclaims for Trademark Invalidity,” *Intellectual Property & Technology Law Journal*, Vol. 25, No. 5, May 2013.

### ***Professional & Community Engagement***

- Principal editor of the firm’s Mark This Down newsletter on trademark, copyright, and advertising issues
- International Trademark Association (INTA) – Right of Publicity Committee
- State Bar of Georgia, Intellectual Property Section

### ***Education***

- Vanderbilt University (J.D., 1990)
- Wabash College (A.B., 1985)

### ***Admitted to Practice***

- Georgia

### ***Related Services***

Intellectual Property | Intellectual Property Litigation | Trademark & Copyright | Intellectual Property Licensing Transactions | Advertising | Marketing & Promotions | Trademark, Copyright & False Advertising Litigation | Retail | Trademark Prosecution & Portfolio Management