

Mark S. VanderBroek

Partner

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Mark is experienced in franchise law and litigation, intellectual property litigation and counseling, business litigation, and alternative dispute resolution. He leads the firm's Franchise and Distribution Law Team, and is a commercial arbitrator on the American Arbitration Association roster.

Experience

The following is a selected sampling of matters and is provided for informational purposes only. Past success does not indicate the likelihood of success in any future matter.

Experience

- Franchise Law and Litigation, including:
 - counseling on franchise disclosure, regulation, contracts, compliance, and starting up/modifying franchise systems
 - litigating franchise and business disputes for franchisors and franchisees
 - defending vicarious liability claims against franchisors
- Intellectual Property Litigation and Counseling – involving:
 - trademarks and trade dress
 - copyrights
 - false advertising and unfair competition
 - restrictive covenants and misappropriation of trade secrets
 - Internet, social media, and technology
- Business Litigation – including claims of:
 - breach of contract
 - tortious interference, fraud, RICO, other business torts
 - deceptive trade practices
 - defamation – including online defamation
 - force majeure and related contractual defenses
- Construction Law and Litigation

Education

University of Chicago Law School, JD
(1984)

- The University of Chicago Law Review

University of Michigan, BBA, with
honors (1981)

Admissions

Georgia

Tennessee

Clerkships

Law Clerk, The Honorable James C. Hill,
U.S. Court of Appeals for the Eleventh
Circuit (1984 - 1985)

Practice Areas

[Commercial Litigation & Business Torts](#)

[Construction and Construction
Transactions](#)

[Dispute Resolution Solutions](#)

[Franchise & Distribution - Corporate](#)

[Franchise & Distribution - Litigation](#)

[Intellectual Property Litigation](#)

Industries

- Litigating design and construction claims
- Drafting and negotiating design and construction contracts
- Has tried cases to verdict before judges, juries, and arbitrators; is experienced in pursuing and defending against motions for preliminary injunction and temporary restraining order
- Alternative Dispute Resolution
 - Member of American Arbitration Association roster of commercial arbitrators since 2020
 - Served as arbitrator in cases involving claims of breach of contract, deceptive trade practices, and other commercial disputes

Representative Engagements

- *SmartSky Networks v. Wireless Systems Solutions*. Obtained \$12.5 million arbitration award and a permanent injunction to prevent misuse of intellectual property on claims for SmartSky against its former technology vendor for breach of technology development contracts, misappropriation of trade secrets, unfair and deceptive trade practices, and false advertising.
- *Lone Star Steaks v. Lone Star Steakhouse & Saloon*. Trademark infringement suit; obtained preliminary and permanent injunctions and award of damages and attorneys fees for local restaurant chain against national restaurant chain.
- *PharmaNetics v. Aventis Pharmaceutical*. Obtained denial of preliminary injunction motion on claims of false advertising of prescription drug product and disparagement of plaintiff's medical device; summary judgment granted on those and additional claims of breach of contract, fraud, tortious interference, and unfair competition; affirmed on appeal to 4th Circuit.
- Represent franchisors (which have included *Shoney's*, *Atlanta Bread Company*, *Little Caesars*, *Ramada*, *Days Inn*, *Century 21*, and *Coldwell Banker*) and franchisees in suits and arbitrations by franchisors to enforce termination of franchise, enjoin trademark and trade dress infringement, enforce restrictive covenants and trade secret rights, and recover damages, and by franchisees for claims of fraud, wrongful termination, franchise disclosure violations.
- Tried defamation claims for national restaurant franchisor against former franchisee who posted dozens of disparaging Internet publications, obtaining preliminary and permanent injunctions and damages award.
- *Monjes v. Days Inns*. Obtained summary judgment for hotel franchisor on vicarious liability claims arising from shooting at franchisee hotel.
- *Market Street Press v. Google*. Defended Google against trademark infringement claims alleging that advertising tagline was causing "reverse confusion" of the public.
- *SunAmerica v. Sun Life Assurance Company of Canada*. Led three-firm legal team in appeal of trademark infringement case

Construction and Construction
Transactions

Food & Beverage

involving issues of acquiescence and “inevitable” confusion, and in defending second trademark suit involving multiple issues and 14 expert witnesses.

- *Fox SportSouth v. Turner Broadcasting System*. Defended TBS against lawsuit and preliminary injunction motion seeking to enjoin launch of new cable network as breach of contractual restrictive covenant.
- *Montlick & Associates v. Exclusive Legal Marketing*. Pursued trademark infringement, false advertising, and unfair competition lawsuit against lawyer referral service employing deceptive Google keyword advertisements to divert potential clients in “bait and switch” scheme, resulting in successful settlements.
- Represented contracting parties, including landlords and tenants, in litigating and advising on defenses of force majeure, impossibility/impracticability of performance, and frustration of purpose arising from COVID-19 pandemic and resulting governmental orders and declarations.
- Represented software designer and major shareholder in lawsuit for copyright infringement and breaches of contract and fiduciary duties arising from dispute over ownership and licensing of software program and business divorce.
- Represented *Chick-fil-A* in cases of copyright and trademark infringement and trademark dilution of “cow” advertising spokes-animals and “Eat Mor Chicken” mark.
- Represented *Turner Broadcasting System* in drafting and negotiating design and construction contracts and counseling on legal issues and claims during and after design and construction of multi-purpose arena facility and related public improvements, and in conversion of Olympic stadium to baseball stadium.

Previous Professional Experience

- Partner of Troutman Sanders

Recognitions

The bar rules of some states require that the standards for an attorney’s inclusion in certain public accolades or recognitions be provided. When such accolades or recognitions are listed, a hyperlink is provided that leads to a description of the respective selection methodology.

- [The Best Lawyers in America®](#), Lawyer of the Year, Atlanta, GA, Franchise Law (2024-2026)
- [The Best Lawyers in America®](#), Franchise Law (2010–2026), Litigation – Intellectual Property (2010–2026)
- [Who's Who - Legal Franchise Law](#)(2012–2017, 2020–2024)
- [Chambers USA: America's Leading Lawyers](#), Intellectual Property Law (2003–2004, 2009–2012)
- [Georgia Super Lawyers](#), Intellectual Property Litigation (2004–

2017, 2019–2024)

- Atlanta Volunteers Lawyers' Foundation Phil Heiner Award (1993, 2014)
- State Bar of Georgia, Atlanta Bar Association, and Georgia State University Intellectual Property Community Service Award (2014)

Professional Activities

- American Bar Association
 - IP Section
 - Litigation Section
 - Forum on Franchising
- Georgia Bar Franchise Law Section
 - Former Chair and Executive Committee Member
- Atlanta Bar Association
 - IP Section
 - Former Board Member
- Federal Bar Association

Community

- Atlanta Volunteer Lawyers' Foundation
 - Former President of Board
- Atlanta Legal Aid Society
 - Former Advisory Board Member
- Buckhead Church

Articles & Speeches

Insights

Annual Franchise and Distribution Law Developments 2021 - Co-Author (ABA 2021)

[Force Majeure and Other Potential Defenses to COVID-19 Related Contractual Non-Performance](#)- Co-Author (March 19, 2020)

[Learn From Sofia Vergara—Are Your Online Ads Legal?](#), *Bloomberg Law*- Author (January 10, 2020)

Events/Speaking Engagements

ABA Forum on Franchising, Responding to and Surviving Negative Social Media Review and Online Comments - Co-Presenter (November 2, 2023)

Southeast Franchise Forum, Franchise Legal Update - Co-Presenter (May 2022, May 2023)

[ABA Forum on Franchising](#), *Annual Franchise and Distribution Law Developments*- Co-Presenter (October 14, 2021)

[Navigating the Legal, Economic, and Business Challenges of the Coronavirus Pandemic | Webinar 2](#)- Co-Presenter (March 26, 2020)

[ABA Forum on Franchising: Avoiding and Litigating Claims in Advertising Franchised Products and Services- Speaker](#) (October 17, 2019)

[Advanced Topics in Franchising and Distribution: Attorney-Client Privilege for In-House Counsel- Speaker](#) (March 19, 2019)

Preserving the Attorney Client Privilege for In-House Counsel , *ABA Forum on Franchising Webinar- Speaker* (December 15, 2017)

[Right of Publicity Claims in a Digital Age](#), *American Bar Association 39th Annual Forum on Franchising- Co-Presenter* (November 2016)

The Legacy of Legacy Academy: How the Legacy Academy Cases Impact Franchisor and Franchisee Claims, Defenses, and Damage Theories and Calculations , *Georgia ICLE on Advanced Topics in Franchising and Distribution*(March 2016)

Franchising Update: NLRB and the Joint Employer Threat, International Franchise Association/Southeast Franchise Forum presentation (January 2016)

Professionalism Issues Related to Attorney-Client Privilege for In-House and Outside Counsel , *Georgia ICLE on Advanced Topics in Franchising and Distribution- Speaker* (March 2015)

Resolving Franchise Disputes: Pros and Cons of Mandatory Mediation and Arbitration v. Litigation , *Georgia Bar Franchise Section Roundtable Luncheon*(2014)

Generating Revenue: Advertising, Branding and Buzz , *Media Law in the Digital Age Seminar*(2011)

Termination and Alternatives to Termination , *ICLE Franchise Law Seminar*(2011)

Maintaining Trade Secrets and Enforcing Non-Competes After Termination , *Southeast Franchise Forum*(2010)

Building Your Brand at the Grassroots Level , *International Franchise Association*(2010)

Protecting and Enforcing Trade Dress , *ABA Forum on Franchising*(2009)

Developments in Technology and Internet Law , *Atlanta Bar Association SpringPosium*(2008-2009)

Trademark and Intellectual Property Issues in Franchises , *ICLE Seminar on Nuts and Bolts of Franchise Law*(2007)

Fundamentals of U.S. Trademark Dilution Claims , *International Trademark Association Annual Meeting*(2004)

ABCs of Trademark Infringement and Related Claims , *PLI Seminar*(2003)

Internet Policing and Enforcement , *International Trademark Association Seminar*(2000)

Building and Protecting Brand Identity on the Internet , *Law Seminars International Seminar*(2000)