



David B. Owsley II

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David Owsley is a Member in the firm's Business Litigation Service Group in Louisville. He practices complex and bet-the-company litigation in courts across the country, with subjects including intellectual property, commercial disputes, government investigations, product liability, international disputes, trusts and estates, antitrust, fiduciary duty, corporate governance, executive employment, legal ethics, professional liability, and constitutional law.

# CAPABILITIES

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## Practice Areas

- Antitrust, Consumer Protection & Attorney General Defense
- Appellate Advocacy
- Arbitration, Mediation & Alternative Dispute Resolution
- Business Litigation
- Class Action, Mass Action & Multi-District Litigation
- Employment Litigation
- Financial Services Litigation
- Government & Regulatory Litigation
- Intellectual Property & Technology
- Intellectual Property Litigation
- Litigation & Appeals
- Privacy & Data Security
- Product Liability Litigation
- Professional Liability Litigation
- Real Estate & Land Use Litigation

## RECENT ASSIGNMENTS

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- Obtained summary judgment dismissing the Consumer Financial Protection Bureau's claims that a Louisville law firm paid "illegal kickbacks" in violation of RESPA. *See Consumer Fin. Prot. Bureau v. Borders & Borders, PLC*, 2017 U.S. Dist. LEXIS 108384, 2017 WL 2989183 (W.D. KY July 12, 2017). This was the CFPB's first loss at the trial court level, ending a six year investigation and a four year federal litigation. *See "Kentucky Law Firm Beats CFPB's Kickback Claims," National Law Journal*, July 14, 2017.

- Won at the Third Circuit Court of Appeals with an opinion affirming a complete defense verdict in a trade secret case alleging **\$80 million** in damages. See *Givaudan Fragrances Corp. v. Krivda*, 639 Fed. Appx. 840, 2016 U.S. App. LEXIS 2459 (3d Cir. N.J. Feb. 12, 2016); "3d Circ. Won't Revive \$80M Fragrance Secrets Row," *Law 360* (February 12, 2016).
- Lead counsel for UK protective case manufacturer Tech21 defending against patent infringement claims filed by OtterBox at the United States International Trade Commission, *In the Matter of Certain Protective Cases for Electronic Devices and Components Thereof*, Investigation No. 337-TA-955. Obtained complete dismissal of the investigation. See "Victory for Tech21 as OtterBox ends patent dispute with protective case rival," *MOBILE NEWS* (September 15, 2015).
- Conducts internal investigations, reports findings, and provides recommendations to clients relative to the risk of liability to an organization and/or its individuals.
- Obtained a defense verdict for fragrance company Mane USA, Inc. after a five week jury trial in New Jersey federal court, dismissing claims that Mane misappropriated 600 trade secret fragrances from Swiss fragrance giant Givaudan, who sought **\$80 million** in damages. See *Fragrance Co. Loses \$80M Trade Secrets Suit*, *Law360* (February 7, 2014) ("In a case that has been billed as the largest New Jersey has ever seen regarding misappropriation of trade secrets, the federal jury ruled James Krivda, Givaudan's former vice president over its perfumery department, did not violate a confidentiality provision in his employment contract when he left the fragrance maker for competitor Mane USA in April 2008"). Before trial, Mane obtained summary judgment on the majority of the claims in a decision recognized as an important case for liability of subsequent employers. See *Givaudan Fragrances Corp. v. Krivda*, 2013 U.S. Dist. LEXIS 153437 (D.N.J. Civil Action No. 3:08-cv-04409, Oct. 25, 2013), reported in "Failure to Provide Specific Information On Alleged Misappropriations Fatal to Claims," *Bloomberg, BNA Patent, Trademark & Copyright Journal* (October 29, 2013).

- Obtained a **\$40 million** settlement for global flavor company V. Mane Fils ([www.mane.com](http://www.mane.com)) in a lawsuit against a competitor for claims of patent infringement, false advertising, unfair competition, and tortious interference. See NEW YORK TIMES, "IFF and Mane Announce Settlement of Mane's Lawsuit Concerning Monomenthyl Succinate" (December 29, 2011); *V. Mane Fils S.A. v. Int'l Flavors & Fragrances, Inc.*, 249 F.R.D. 152 (D.N.J. 2008), reported in NEW JERSEY LAW JOURNAL, "Use of Attorneys' Letters To Woo Business Held to Waive Privilege" (March 5, 2008); *V. Mane Fils S.A. v. Int'l Flavors & Fragrances, Inc.*, 2011 U.S. Dist. LEXIS 38637 (D.N.J. Apr. 8, 2011); *V. Mane Fils S.A. v. Int'l Flavors & Fragrances, Inc.*, 2008 U.S. Dist. LEXIS 49578 (D.N.J. June 23, 2008); *V. Mane Fils S.A. v. Int'l Flavors & Fragrances, Inc.*, 2008 U.S. Dist. LEXIS 63619 (D.N.J. Aug. 19, 2008); *V. Mane Fils S.A. v. Int'l Flavors & Fragrances, Inc.*, 2008 U.S. Dist. LEXIS 82540 (D.N.J. Oct. 15, 2008); *V. Mane Fils S.A. v. Int'l Flavors & Fragrances, Inc.*, 2009 U.S. Dist. LEXIS 56462 (D.N.J. July 1, 2009); *V. Mane Fils S.A. v. Int'l Flavors & Fragrances, Inc.*, 2010 U.S. Dist. LEXIS 45645 (D.N.J. May 6, 2010)
- Obtained defense judgment on behalf of a bank dismissing a **\$30 million** claim for alleged investment mismanagement concerning the assets of a large multigenerational trust. Obtained affirmance on appeal. See *Middleton v. PNC Bank, NA*, 2014 Ky. App. Unpub. LEXIS 846, 1-2 (Ky. Ct. App. Oct. 31, 2014), discretionary review denied *Middleton v. PNC Bank, N.A.*, 2015 Ky. LEXIS 1793 (Ky. Aug. 20, 2015).
- Obtained a series of federal consent judgments for UK protective case manufacturer Tech21 enforcing intellectual property rights relating to trade dress, trademark, Lanham Act, and patent claims. See, e.g., *Tech 21 UK Limited et al v. Spigen Inc.*, Case No. 15-cv-05059 (N.D. CA) (DE# 50, Consent Judgment); *Tech 21 UK Limited et al v. Doria International, Inc.*, Case No. 5:16-cv-07144-BLF (N.D. CA) (DE# 17 Consent Judgment); *Tech 21 UK Limited et al v. Rubicon Ventures LLC*, Case No. 3:16-cv-07147-JST (N.D. CA) (DE# 17 Consent Judgment).
- Obtained trial court and appeal opinions that a municipal ordinance was unconstitutional under the First Amendment and the doctrine of intergovernmental immunity. See "Audubon Park loses appeal in airport dispute," *Courier-Journal* (December 29, 2015).

- Successfully represented a group of consumers and real estate brokers in a series of constitutional cases under the Dormant Commerce Clause invalidating “turf state” laws that restricted interstate brokerage and impaired the national market for commercial real estate. See GLOBE STREET, "Marcus & Millichap Wins 'Turf State' Lawsuit" (September 13, 2007) (“The entire industry is expected to benefit from the victory in a federal lawsuit challenging Kentucky’s law prohibiting cooperation with out-of-state brokers”); WALL STREET JOURNAL, "Turf Ruling & Dormant Commerce Clause Violators . . . Beware Kentucky!" (September 12, 2007); *Marcus & Millichap Real Estate Inv. Brokerage Co. v. Skeeters*, 395 F. Supp. 2d 541 (W.D.Ky. 2005); *River Oaks Mgmt. v. Brown*, 2007 U.S. Dist. LEXIS 65286 (W.D. Ky. 2007); *LexCin Ptnrs, Ltd. v. Newmark S. Region, LLC*, 2009 Ky. App. Unpub. LEXIS 638 (Ky. Ct. App. July 31, 2009)
- Successfully represented clients in corporate governance and complex contract disputes. *Arco Aluminum, Inc. v. Novelis, Inc.*, 2008 U.S. Dist. LEXIS 11636 (D. Ky. 2008).
- Successfully defended a business against a putative environmental class action.
- Successfully defended a manufacturer in an antitrust suit alleging unlawful price discrimination.
- Frequently advise entities on antitrust compliance and competition issues.

## BAR ADMISSIONS

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- Admitted Pro Hac Vice in Several Jurisdictions
- Kentucky
- U.S. Court of Appeals for the 3rd Circuit
- U.S. Court of Appeals for the 6th Circuit
- U.S. District Court for the Eastern District of Kentucky
- U.S. District Court for the Western District of Kentucky

## RECENT NEWS, ARTICLES & SPEAKING ENGAGEMENTS

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- FTC Issues Notice of Proposed Rulemaking to Ban Employee Non-Compete Agreements *with Robin E. McGuffin* Stites & Harbison Client Alert, January 5, 2023
- Title Agencies Did Not Violate RESPA Affiliated Business Rule  
*The Title Insurance Law Newsletter*, American Land Title Association, September 2017
- 3rd Circ. Won't Revive \$80M Fragrance Secrets Row  
by Dan Packel, *Law360.com*, February 12, 2016
- Victory for Tech21 as OtterBox ends patent dispute with protective case rival  
by Michael Garwood, *MobileNews*, September 15, 2015
- Stites & Harbison Obtains Defense Verdict in \$80 Million Trade Secret Misappropriation Case  
*Stites & Harbison, PLLC*
- Accepting the Dual Sovereignty Exception to Double Jeopardy: A Hard Case Study  
81 *Wash. U. L.Q.* 765 (2003)
- State Restrictions on Undocumented Noncitizens: The Interplay of Equal Protection, Federal Preemption and Federal Exclusivity  
Speaker

## MEMBERSHIPS

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- American Bar Association
- Kentucky Bar Association
- Louisville Bar Association
- Defense Research Institute
- Leadership Louisville

## COMMUNITY INVOLVEMENT

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- Leadership Louisville, Class of 2016
- Legal Aid Society, Volunteer Attorney

## EDUCATION

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Washington University School of Law J.D. 2004

- Executive Articles Editor, *Wash. U. L.Q.*
- Scholar at Law Scholarship; Appellate Clinic (assisted drafting amicus brief to United States Supreme Court in Tenn. *Student Assistance Corp. v. Hood*, 541 U.S. 440 (2004);
- International Public Interest Clinic Program, South Africa
- Honor Scholar Award
- Dean's List

University of Virginia B.A., Cognitive Science and Psychology 2000

- McIntire Business Institute at the School of Commerce,  
Foreign Study - University of Valencia, Spain

## BEFORE STITES & HARBISON

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During the summer of 2002, Dave worked for a law clinic in South Africa. Before law school, Dave worked as a research assistant and for a dot-com startup. He also completed the McIntire Business Institute program at the University of Virginia School of Commerce.

## MORE THAN STITES & HARBISON

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Dave has volunteered for the Legal Aid Society in representing individuals and families in housing related issues and forcible detainer actions.

## BESIDES STITES & HARBISON

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Dave enjoys travel and has backpacked extensively in countries in Africa, Central America, Asia, and Europe.

## ACCOLADES

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- *Best Lawyers in America*®, Commercial Litigation (2018-24)
- *Kentucky Super Lawyers*®, Rising Star (2013-17)
- *Benchmark Litigation* magazine, Future Star (2015-23)
- *Benchmark Litigation*, 40 & Under Hot List (2016, 2018)