



**David B. Owsley II**

Title: Member

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Dave Owsley is an experienced trial and appellate lawyer who has successfully represented clients through complex and bet-the-company litigation in more than 35 jurisdictions in high-stakes matters involving intellectual property, commercial disputes, business torts, product liability, executive employment, financial misconduct, ESI issues, e-commerce, forensic investigations, emerging technologies, constitutional law, government investigations, fiduciary duties, corporate governance, investment management, unfair competition, antitrust, professional liability, legal ethics, and cross-border disputes. He also serves as outside general counsel for clients and assists in internal investigations. He is a member of the Business Litigation group in Louisville.

## 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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- Currently prosecuting and defending multiple breach of contract, product liability, and employer liability actions alleging over **\$200 million** in potential damages.

- After a five week jury trial in New Jersey federal court, obtained defense verdict for fragrance company Mane USA dismissing claims that Mane misappropriated 600 trade secret perfumes from Swiss fragrance giant Givaudan, who sought over **\$80 million** in damages. Won at the Third Circuit Court of Appeals affirming the verdict. See *Givaudan Fragrances Corp. v. Krivda*, 639 Fed. Appx. 840, 2016 U.S. App. LEXIS 2459 (3d Cir. N.J. Feb. 12, 2016).
- Defended a corporate client in a high-stakes jury trial against a group of plaintiffs seeking over **\$150 million** in compensatory and punitive damages for alleged chemical exposure and wrongful death.
- Defended UK phone case manufacturer Tech21 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 dismissal of the investigation, which threatened to ban importation of more than \$200 million in prospective U.S. sales.
- Obtained a **\$40 million** settlement for global flavor company V. Mane. Filed a lawsuit against industry giant International Flavors and Fragrances for claims of patent infringement, false advertising, unfair competition, and tortious interference. Reported in *NEW YORK TIMES*.
- Obtained defense judgment on behalf of a bank dismissing a **\$30 million** claim for alleged investment mismanagement concerning the assets of a large 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 defense judgment dismissing claims brought by the Consumer Financial Protection Bureau alleging that a 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. The CFPB had sought to disgorge millions of dollars of law firm revenue associated with work performed on multiple years of real estate transactions.
- Successfully represented a group of consumers and a commercial real estate brokerage firm 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. Prevented state regulators from attempting to disgorge over **\$100 million** in interstate brokerage commissions. Reported in the *WALL STREET JOURNAL*.

- Successfully represented a client in a joint venture dispute over control of a **\$400 million** manufacturing facility.
- Overturned a **\$11 million** default judgment against an employer for alleged unpaid compensation and then successfully prosecuted counterclaims for trade secret misappropriation, Lanham Act violations, and breach of fiduciary duty against a departing executive.
- Successfully prosecuted claims for trade secret misappropriation, breach of fiduciary duty, and breach of restrictive covenants against a group of executives who attempted poach more than **\$15 million** of customer accounts from their employer while starting a rival business. Injunctions obtained against multiple parties following a bench trial.
- Successfully prosecuted complex breach of contract claims related to a business sale involving more than **\$18 million** in compensatory damages.
- Successfully prosecuted claims on behalf of an employer for trade secret misappropriation, breach of fiduciary duty, and breach of restrictive covenants against a managerial employee who started a rival business and purported to secure **\$5 million** in customer contracts. Injunctions obtained after a forensic investigation and bench trial.
- Obtained a series of federal judgments for a phone case manufacturer enforcing intellectual property rights relating to trade dress, trademark, Lanham Act violations, and patent claims.
- Obtained **\$2.5 million** recovery in an arbitration demand for commercial indemnification on behalf of a manufacturer against a supplier.
- Obtained judgments of approximately **\$2 million** recouping losses by investors in an international manufacturing facility.
- Obtained trial court and appellate rulings that a city's quasi-criminal enforcement actions were unconstitutional under the First Amendment and the doctrine of intergovernmental immunity. *City of Audubon Park v. Louisville Regional Airport Authority*, 2017 WL 4712775 (Ky.App., 2017).
- Successfully defended California Proposition 65 litigation related to chemical labeling.
- Successfully defended a business against a putative environmental class action.
- Successfully defended a manufacturer in an antitrust suit alleging unlawful price discrimination.

- Successfully prosecuted claims for trademark infringement, unfair competition, and cybersquatting against a departing executive.
- Successfully prosecuted claims for indemnification related to false designation of product content and country of origin against a manufacturing supplier.
- Conducts internal financial investigations and forensic computer analysis, reports findings, and provides recommendations to clients and organizations.
- Advises 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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- Fragrance Co. Loses \$80M Trade Secrets Suit  
by Joshua Alston, *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.”)
- IFF and Mane Announce Settlement of Mane’s Lawsuit Concerning Monomenthyl Succinate  
by staff writer, *NEW YORK TIMES*, December 29, 2011

- Victory for Tech21 as OtterBox ends patent dispute with protective case rival  
by Michael Garwood, *MobileNews*, September 15, 2015
- Turf Ruling & Dormant Commerce Clause Violators . . . Beware Kentucky!  
By Peter Lattman, *WALL STREET JOURNAL*, September 12, 2007
- Marcus & Millichap Wins 'Turf State' Lawsuit  
By Bob Howard, *GLOBE ST.*, 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”).
- Kentucky Law Firm Beats CFPB's Kickback Claims  
By C. Ryan Barber, *NATIONAL LAW JOURNAL*, July 14, 2017
- 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
- Failure to Provide Specific Information On Alleged Misappropriations Fatal to Claims  
*BLOOMBERG, BNA PATENT, TRADEMARK & COPYRIGHT JOURNAL*, October 29, 2013
- Use of Attorneys' Letters To Woo Business Held to Waive Privilege  
*NEW JERSEY LAW JOURNAL*, March 5, 2008
- Audubon Park loses appeal in airport dispute  
By Martha Elson, *COURIER-JOURNAL*, December 29, 2015
- Accepting the Dual Sovereignty Exception to Double Jeopardy: A Hard Case Study  
81 *Wash. U. L.Q.* 765 (2003)
- FTC Issues Notice of Proposed Rulemaking to Ban Employee Non-Compete Agreements *with Robin E. McGuffin* Stites & Harbison Client Alert, January 5, 2023
- Stites & Harbison Obtains Defense Verdict in \$80 Million Trade Secret Misappropriation Case  
*Stites & Harbison, PLLC* Stites & Harbison Client Alert, February 11, 2014

## 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

## EDUCATION

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Washington University School of Law J.D. 2004

- Executive Articles Editor, *Law Review*
- Scholar at Law Scholarship
- Honor Scholar Award
- 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

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

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

## MORE THAN STITES & HARBISON

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

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

He has backpacked extensively in Africa, Central America, Asia, and Europe.



## ACCOLADES

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- *Best Lawyers in America*<sup>®</sup>, Commercial Litigation (2018-25)
- *Kentucky Super Lawyers*<sup>®</sup>, Rising Star (2013-17)
- *Benchmark Litigation* magazine, Future Star (2015-25)
- *Benchmark Litigation*, 40 & Under Hot List (2016, 2018)