



Antitrust & Business Torts



Parker Poe's lawyers provide comprehensive and wide-ranging services to help our clients manage their antitrust, trade regulation, and business tort matters. We counsel clients regarding antitrust and trade regulation issues affecting corporate acquisitions, retail and wholesale distribution, manufacturing, and pricing and marketing strategies. We work closely with Parker Poe's corporate lawyers through all stages of transactions with potential antitrust issues to anticipate and avoid problems. Our goal is to avoid litigation, but when it does arise, Parker Poe has extensive experience in handling a full range of litigation matters – both in state and federal courts as well as in alternative dispute resolution settings – involving antitrust and competition issues, intellectual property rights, and contractual rights that are critical to the strength and success of any business venture in today's market. Parker Poe's lawyers focus on understanding the intricacies of each client's business in order to work with the client to tailor antitrust strategies to their unique needs.

Our team partners with clients to manage the full range of non-contractual claims and disputes that arise in their business transactions, ownership, and management. These include claims for misrepresentation, fraud, unfair and deceptive trade practices, tortious interference, false advertising, unfair competition, trade secret misappropriation, trademark infringement, copyright infringement, patent infringement, breach of fiduciary duties, misappropriation of business opportunities, and conspiracy.

Our attorneys include former federal and state prosecutors, former antitrust agency employees, and lawyers who have tried cases that involved the U.S. Department of Justice's Antitrust Division and the Federal Trade Commission.

REPRESENTATIVE EXPERIENCE

Litigation – We represent our clients in federal and state courts, complex multiparty litigation, class actions and multi-district consolidated cases, and in both private and public antitrust cases. We have been involved in the multiparty defense of several indirect purchaser class action cases and in other major antitrust litigation involving improper assertion of copyright and patent rights and monopolization of downstream service markets.

Parker Poe attorneys have tried dozens of cases ranging from intellectual property and consumer protection matters to defending and enforcing covenants not to compete, defamation, Lanham Act, and trade secrets matters. Our team won a \$15 million award in the North Carolina Business Court for misappropriation of trade secrets and unfair competition, and we have defended clients in litigation brought by private parties, state attorneys general, and the FTC.

Defense of federal and state antitrust investigations and cases – We routinely handle civil and criminal matters, including responding to civil investigative demands and grand jury subpoenas,



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representing both corporate and individual clients in civil and criminal investigations and in lawsuits brought by national and state enforcement agencies. We regularly participate in the administrative trials in Federal Trade Commission (FTC) matters and in their subsequent judicial review. Some of our cases have involved antitrust exemptions, such as the state action doctrine, the McCarran-Ferguson Act, the Noerr-Pennington doctrine and the filed tariff doctrine.

Alternative dispute resolution – We have extensive experience with the alternative dispute resolution (ADR) techniques of arbitration, mediation and summary jury trials. Our lawyers served on the task forces and committees charged with developing ADR methods and rules for use in North Carolina. Parker Poe was the first firm to participate in a summary jury trial in court in North Carolina and we continue to champion ADR when it best serves our clients and their needs.

Mergers & acquisitions – Our firm has broad experience with pre-merger filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, including the pursuit – and resolution – of merger and acquisition matters both at the Antitrust Division and at the FTC.

International – We represent export trading companies, foreign-based companies and individuals responding to U.S. antitrust investigations and litigation, as well as counseling domestic firms facing or considering claims in foreign jurisdictions, particularly in the European Union (EU) and its member states, including representing clients in connection with mergers and acquisitions subject to EU review.

Intellectual property – Parker Poe attorneys handle a wide variety of intellectual property cases, and recently won a \$1.7 million verdict in a jury case involving false advertising claims. We handled one of the state's landmark decisions on trade secret misappropriation involving claims of corporate raiding. We frequently assist clients in litigation involving claims of trademark, copyright and patent infringement as both lead and local counsel.

Consumer protection, advertising, business torts and covenants not to compete – We routinely handle matters relating to consumer protection and business torts, including fraud, defamation, covenants not to compete, advertising, the Lanham Act, North Carolina Unfair and Deceptive Trade Practices Act, various state trade secrets acts and confidentiality agreements. These matters have arisen in litigation brought by private parties, state attorneys general and the FTC.

Appeals – We have a long history of representing clients in appeals in the United States Courts of Appeals and in state appellate courts.



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Counseling – While litigation is what we are often recognized for, sound and creative counseling in partnership with clients is the first line of defense. We help our clients realize their commercial objectives while navigating and maintaining state, national or international antitrust standards. We counsel and advise clients on:

- Manufacturing/production activities at the wholesale and retail levels on a wide variety of distribution issues involving both price and non-price questions.
- Trade association formation and management.
- Formation and combination of practice groups, pricing practices as affected by levels of integration, most favored nations clauses, Certificate of Need issues and related matters involving physician groups, hospitals and other medical entities.
- Application of antitrust and trade regulation standards in telecommunications, biotechnology, pharmaceuticals and other high technology markets, as well as traditional industries such as manufacturing, transportation and insurance, designing effective antitrust compliance programs, performing antitrust audits and presenting programs to help our clients and their employees understand how antitrust and competition issues affect their work and your business.

Some of our representative cases include:

- Served as trial counsel for plaintiff SMD Software in a case involving allegation of libel and false advertising in violation of the North Carolina Unfair and Deceptive Trade Practices Act. After a jury trial in federal court, the jury awarded SMD \$1.7 million in damages. *SMD Software Inc. et al., v. EMove Inc. et al.*, 5:08-cv-00403 (EDNC).
- Represented a U.S. affiliate of a European company and its officers in a “corporate raiding” styled case, involving claims of trade secret misappropriation and alleged violations of North Carolina Unfair and Deceptive Trade Practices Act (UDTPA), in the North Carolina Business Court which, after substantial motion practice, was resolved amicably.
- Represented plaintiffs in an unfair competition and trade secret case in the North Carolina Business Court involving claims that the defendants had attempted to create an electronic database of construction projects to compete unfairly with the plaintiffs through the misappropriation of plaintiff’s intellectual property, resulting in the entry of preliminary and permanent injunctive relief.
- Representing the plaintiff in a corporate raiding case in the North Carolina Business Court in a lawsuit alleging claims of unfair and deceptive trade practices, misappropriation of confidential information and tortious interference with business relations arising out of an alleged raid of plaintiff’s business for its employee base, customers and confidential information from its multiple locations.



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- Represented a global manufacturer in a consummated merger trial before the Federal Trade Commission and on appeal to the full Commission.
- Represented clients in connection with grand jury subpoenas issued in connection with its ongoing investigation of the automotive parts industry and in connection with private litigation in multi-district matters in the polyurethane foam market and other proceedings.
- Represented a national company in a RICO action brought against it in the Western District of North Carolina and obtaining a denial from the court of a motion to seize assets in the action which was subsequently settled.
- Obtained a dismissal of a RICO action against another national company in a case before the Western District of North Carolina, which was affirmed by the Fourth Circuit Court of Appeals.
- Obtained a temporary restraining order and injunction in a RICO action brought in the United States District Court for the Western District of North Carolina preventing a former employee and his confederates from utilizing a company's proprietary trading algorithms.
- Obtained a temporary restraining order and injunction under the Computer Fraud and Abuse Act in the United States District Court for the Western District of North Carolina to prevent a software company from implementing a "time bomb" code embedded in a software program provided to a customer that would have disabled that software and shut down the customer's business if implemented.