

## Michael J. Lockerby

### Partner

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Michael J. Lockerby is a partner with Foley & Lardner LLP and is co-chair of the Distribution & Franchise Practice and a member of the Appellate, Intellectual Property Litigation, Antitrust & Competition and Privacy, Security & Information Management Practices and the Automotive and Food & Beverage Industry Teams. He is former co-chair of the firm's Washington, D.C. Litigation Department.

For the past 40+ years as a trial lawyer, Michael has been on the cutting edge of the intellectual property, antitrust, business tort, and franchise law issues that face all manufacturers and other suppliers whose products are sold through independent dealers, distributors, and franchisees. He has appeared throughout the country in state and federal trial courts and before arbitrators and other ADR providers.

On behalf of a number of clients, Michael has led the nationwide litigation of system-wide issues. Such issues include the consolidation of overlapping distribution networks, the rebranding of trademarked products formerly distributed under another brand, the enforcement of exclusive dealing requirements, "encroachment claims" raised by direct sales and Internet marketing, implementing new franchise system standards and issues raised collectively by franchisee and dealer associations. The many industries in which Michael has litigated such issues include computer hardware and software; telecommunications and other high technology products; alcoholic beverages; construction, forestry, farm, utility, industrial, and outdoor power equipment; motor vehicles; petroleum marketing; and franchisors of restaurants, hotels, personal and professional services, among others.

Based on his experience as a litigator, Michael also helps clients minimize litigation exposure. He regularly negotiates and drafts license, franchise, and distribution agreements for use domestically and overseas. He has helped numerous clients comply with the franchise disclosure and registration laws at both the federal and state level in the United States and with their overseas counterparts.

Before attending law school, he served as a legislative assistant to U.S. Senator John Heinz from 1979-81, and was a research assistant to the Joint Economic Committee of the U.S. Congress from 1978-79.

Throughout his 40-year career as a trial lawyer, Mike Lockerby has earned the trust and respect of judges, juries, and arbitrators from coast to coast. Early on, he learned how to effectively and succinctly present and summarize complex evidence in a six-hour summary jury trial of what otherwise would have been a six-week trial of antitrust claims in federal court in North Carolina. Over the years, he has honed his direct and cross examination skills in dozens of trademark, trade secret, antitrust, unfair competition, franchise, breach of contract, and business tort cases across the country. Many cases were resolved after TRO and preliminary injunction motion hearings — essentially “mini-trials” — with little advance notice and no discovery. In the many other cases that have proceeded to trial and arbitration, he has masterfully used video clips of deposition testimony and written summaries of business records to keep the decisionmaker(s) focused on the critical evidence supporting our clients’ legal arguments. He also knows how to keep these legal arguments easy to understand — notwithstanding the best efforts of opposing counsel at obfuscation. For example, in federal court litigation in Virginia and Louisiana, he secured multimillion-dollar damage and attorneys’ fees awards against telecommunications carriers that tried to use the jargon of telecommunications regulation to divert attention from the merits of breach of contract claims. Regardless of whether the venue is federal court in the Northeast or state court in Texas, he plays well on a national stage while effectively leveraging the strengths of local counsel.

## **Representative Experience**

- Lead counsel for automotive division of RMA pursuing breach of contract, Lanham Act, computer crime, and related claims against former president of subsidiary in Afghanistan. Remaining claims scheduled for bench trial in Detroit the week of March 27, 2017.
- Served as lead counsel for a U.S. intelligence agency contractor pursuing trade secret and related claims against competitor and disloyal former employees. At the preliminary injunction hearing, following bench ruling that the plaintiff was likely to succeed on the merits, the defendant stipulated to consent order granting the preliminary injunctive relief sought. On December 21, 2016, after seven days of trial, obtained jury verdict for three times the damages sought plus award of attorneys’ fees.
- Represented Biotech Co. Ltd. in a trade secret dispute between Taiwanese medical device manufacturers. Case scheduled for jury trial in October 2016 but settled on very favorable terms for client shortly before trial.
- Served as lead counsel for one of three so-called “Manufacturer Defendants”—Pentair Water Pool and Spa, Inc. (“Pentair”)—in class action antitrust litigation pending in federal court in New Orleans. The class action grew out of the FTC’s investigation of distribution practices in the pool products industry. The FTC investigation resulted in a complaint and consent decree against the largest distributor of pool products: Pool Corporation and two of its affiliates, SCP Distributors LLC, and Superior Pool Products LLC (collectively “PoolCorp”). Beginning in December 2011, several class actions were filed against PoolCorp in the Eastern District of Louisiana and elsewhere. Following the consolidation of various cases in MDL litigation in New Orleans, the plaintiffs joined as defendants in June 2012 the three

largest U.S. manufacturers of pool products, the Manufacturer Defendants. In addition to executing an aggressive discovery strategy, we also briefed and argued two motions to dismiss, both of which were granted in significant part. With respect to the remaining claims, they were the subject of recently filed summary judgment motions.

- Secured a \$23 million victory against Sprint in the United States Court of Appeals for the Fourth Circuit on behalf of 19 telecom carriers owned by CenturyLink that provide local telephone service in 18 states. Sprint had refused to pay access charges for traffic originating on cable companies' networks in Voice over Internet Protocol (VoIP). The April 29 federal appeals court decision affirmed the final judgment in favor of CenturyLink in the amount of \$23,376,213.76 that had been entered in the U.S. District Court for the Eastern District of Virginia, Richmond Division, on December 29, 2011, after two trials and numerous motions filed by Sprint during more than two years of litigation. Michael J. Lockerby, partner and co-chair of the Washington, D.C. Litigation Department, served as lead counsel for CenturyLink at the trial and appellate level. CenturyLink is the nation's third largest telecommunications company. The dispute between the two carriers originated from intercommunication agreements (ICAs) formed under the Telecommunications Act of 1996. Avoiding telecom regulatory jargon, Foley attorneys presented the ICA dispute as a simple straightforward breach of contract claim.
- Foley secured a \$23 million victory against Sprint in the United States Court of Appeals for the Fourth Circuit on behalf of 19 telecom carriers owned by CenturyLink that provide local telephone service in 18 states. Sprint had refused to pay access charges for traffic originating on cable companies' networks in Voice over Internet Protocol (VoIP). The federal appeals court decision affirmed the final judgment in favor of CenturyLink in the amount of \$23,376,213.76, after two trials and numerous motions filed during more than two years of litigation. This is an important decision for the telecom industry because it allows carriers to enforce their interconnection agreements regardless of changes in the regulatory environment affecting intercarrier compensation in general and Internet traffic in particular. CenturyLink is the nation's third largest telecommunications company. The dispute between the two carriers originated from intercommunication agreements (ICAs) formed under the Telecommunications Act of 1996. Avoiding telecom regulatory jargon, Foley attorneys presented the ICA dispute as a simple straightforward breach of contract claim. At both the trial and appellate level, the federal courts in Richmond, Virginia rejected Sprint's arguments that ICA disputes cannot be decided by federal courts until after they have been presented to the Federal Communications Commission (FCC) or state public utility commissions. Also, the decision affirmed that telecom carriers can enter into private contracts making access charges payable on traffic originating in VoIP format regardless of how the FCC has classified such traffic in the past or may rule in the future.
- Foley is leading the defense to a franchisee lawsuit concerning whether franchisees are entitled to so-called "brand extensions." The petitioners are Virginia distributors of Coors products that want distribution rights to a new product called Batch 19® that, instead, has been assigned to Miller

wholesalers in their territories. Petitioners, who are represented by counsel for the Virginia Beer Wholesalers Association, have claimed violations of the Virginia Beer Franchise Act. Following an evidentiary hearing on May 1, 2013, and post-hearing briefing on November 14, 2013, the hearing examiner ruled in favor of MillerCoors. On appeal to the Board of Alcoholic Beverage Control of the Commonwealth of Virginia, the decision of the hearing examiner was—following oral argument on April 22, 2014—affirmed on May 9, 2014. The petitioners have since appealed to the Circuit Court of Henry County, Virginia, where the case is now pending.

- Lead counsel for large materials handling company in successful pursuit of trade secret and computer crimes claims for unauthorized access to secure dealer portal. Court granted motion to prevent further spoliation of evidence—ordering the dealer to pay NMHG’s attorneys’ fees and the costs of having a computer forensic expert image and analyze the dealer’s computers in multiple locations in Tennessee and Mississippi.
- Argued the Fourth Circuit appeal of Meineke Car Care Centers, Inc. in a landmark case involving the recovery of so-called “future damages.” Following oral argument in Richmond, Virginia on January 27, 2011, the Fourth Circuit decided in favor of Meineke on April 14, 2011. *Meineke Car Care Ctrs., Inc. v. RLB Holdings, LLC*, 2011 U.S. App. LEXIS 7809, 2011 WL 1422900 (4th Cir. Apr. 14, 2011). The recovery of future damages has, for many years, been one of the most hotly contested issues in franchising. The issue is whether — following termination of the franchise agreement — the franchisee can be held liable for royalties, advertising fund contributions, and other required payments to the franchisor. Many franchise agreements are long-term contracts (sometimes lasting as long as 20 years). As a result, the liability for “future damages” that some franchisees face can be substantial. Meineke’s Fourth Circuit appeal resulted from a decision of the U.S. District Court for the Western District of North Carolina in Charlotte holding that “future damages” are not recoverable. The Fourth Circuit’s reversal was of obvious importance to the appellant-franchisor, Meineke. Meineke’s franchise agreement requires dispute resolution in the Western District of North Carolina. The district court’s decision — citing two prior adverse rulings to Meineke in similar cases — had called Meineke’s position “a swing and a miss, strike three.” *Meineke Car Care Ctrs., Inc. v. RLB Holdings, LLC*, 2009 U.S. Dist. LEXIS 70920 (W.D.N.C. Aug. 7, 2009). The implications of the Fourth Circuit’s Meineke decision, however, are not limited to potential future federal court litigation in Charlotte between Meineke and its franchisees. To the contrary, the Meineke decision — although not binding precedent — could be persuasive authority for franchise disputes in other jurisdictions as well.
- Assisted software company in antitrust aspects of developing a new distribution scheme and drafting related documents for the distribution of an important software product.
- Represented automotive suppliers in connection with supply agreement and warranty disputes with Delphi Automotive. Because the claims were allegedly transferred by Delphi Corporation and/or its affiliates through its bankruptcy proceeding to the purchase, the lawsuit involves a complex bankruptcy

issue concerning the propriety and applicability of assignments of claims in the bankruptcy.

- In the last of a series of favorable decisions in the “Volvo Construction Equipment Market Withdrawal Litigation,” the U.S. Court of Appeals for the Seventh Circuit held that the scope of a “franchise” protected from termination without “good cause” is limited to the trademark that the dealer, distributor, or franchisee has been authorized to use. *FMS, Inc. v. Volvo Construction Equipment North America, Inc.*, 2009 U.S. App. LEXIS 4938 (7th Cir. March 4, 2009), rev’g 2007 U.S. Dist. LEXIS 19577 (N.D. Ill. March 20, 2007). In so holding, the Seventh Circuit rejected the notion that “franchise” protections extend to similar goods and services that manufacturers and franchisors offer under other trademarks. The significance of the decision is reflected in the fact that three trade associations submitted a “friend of the court” brief to the Seventh Circuit in support of Volvo Construction’s position: (1) the National Association of Manufacturers; (2) the Association of Equipment Manufacturers; and (3) the National Marine Manufacturers Association. Previously, the federal court in Chicago had granted summary judgment in favor of the manufacturer, dismissing multiple claims asserted by multiple dealers from the U.S. and Canada. *Cromeens, Hollomon, Sibert, Inc. v. AB Volvo*, 2001 U.S. Dist. LEXIS 15482 (N.D. Ill. Sept. 25, 2001). The Seventh Circuit affirmed the dismissals with the exception of one statutory claim of one dealer. *Cromeens, Hollomon, Sibert, Inc. v. AB Volvo*, 349 F.376, 2003 U.S. App. LEXIS 22859 (7th Cir. Nov. 7, 2003), reh’g denied, 2003 U.S. App. LEXIS (7th Cir. Dec. 17, 2003)—resulting in subsequent district court proceedings on remand and another decision in favor of Volvo by the Seventh Circuit in 2009 the second Seventh Circuit appeal.
- For ten years, served as lead counsel for Volvo Construction Equipment North America, Inc. (VCENA) in dealer termination litigation in Arkansas, Connecticut, Kansas, Illinois, New Jersey, North Carolina, and Texas. These cases followed a series of acquisitions of competing manufacturers by the European parent of VCENA, the Volvo Construction Equipment Group in Brussels, Belgium. As a result of these acquisitions, VCENA ended up with significant overlaps in its North American distribution. In some cases, VCENA found itself with as many as three dealers in a given geographic area. Pursuant to an ongoing program of “Volvoization,” the products of these acquired construction equipment manufacturers were — following the acquisitions — rebranded under the VOLVO® trademark. Pursuant to an ongoing program of dealer “rationalization,” what had previously been three separate dealer networks were consolidated into one network of Volvo Construction equipment dealers. In federal and state courts across the country, we obtained favorable results on behalf of VCENA in the defense of such claims. These favorable results include the following: Following a two-week trial, a state court jury in Corpus Christi, Texas rendered a unanimous defense verdict in less than 30 minutes. *Nueces Farm Center, Inc. v. Volvo Construction Equipment North America, Inc.*, Trial Court Cause No. 00-4732-E (Dist. Ct. Nueces County, Texas 2000). The federal court in Asheville, North Carolina denied various jurisdiction and venue challenges to VCENA’s declaratory judgment action involving multiple claims of dealers from multiple states alleging multiple statutory, tort, breach of contract, and quasi-contract. *Volvo Trademark Holding AB v. Nueces Farm Center, Inc.*, No. 1:01cv122-T, 2001 U.S. Dist. LEXIS 17635 (W.D.N.C. Oct. 26, 2001); *Volvo Trademark Holding AB v. AIS Construction*

Equipment Corp., 162 F. Supp. 2d 465, 470 (W.D.N.C. 2001); AIS Construction Equipment Corp. v. Volvo Construction Equipment North America, Inc., Court File No. 4-01 CV 00166 (SWW) (E.D. Ark. 2001). Thereafter the U.S. District Court for the Western District of North Carolina granted judgment on the pleadings dismissing all claims and counterclaims of all dealers. Volvo Trademark Holding AB v. CLM Equipment Co., 236 F. Supp. 2d 536, 2002 U.S. Dist. LEXIS 25837 (W.D.N.C. Dec. 13, 2002). On appeal, the Fourth Circuit affirmed the dismissals with the exception of one statutory claim asserted by one dealer — a claim for violation of the Arkansas Franchise Practices Act (the AFPA). Volvo Construction Equipment North America, Inc. v. CLM Equipment Co., 386 F.3d 581 (4th Cir. 2004). On remand, the jury found that the plaintiff had suffered no damages—notwithstanding a prior ruling that VCENA had violated the AFPA. Volvo Trademark Holding AB v. AIS Construction Equipment Corp., 416 F. Supp. 2d 404, 2006 U.S. Dist. LEXIS 10020, Business Franchise Guide (CCH) ¶ 13,279 (W.D.N.C. Feb. 16, 2006). The district court thereafter refused to order a new trial or award attorneys’ fees as the Arkansas dealer sought. Volvo Trademark Holding AB v. CLM Equipment Co., 2006 U.S. Dist. LEXIS 64626 (W.D.N.C. Sept. 8, 2006); Volvo Trademark Holding AB v. CLM Equipment Co., 2006 U.S. Dist. LEXIS 75515 (W.D.N.C. Oct. 2, 2006). The Fourth Circuit affirmed this judgment on appeal. Volvo Trademark Holding AB v. Clark Mach. Co., 510 F.3d 474 (4th Cir. 2007). The federal court in Chicago granted summary judgment in favor of VCENA, dismissing multiple claims asserted by multiple dealers from the U.S. and Canada. Cromeens, Hollomon, Sibert, Inc. v. AB Volvo, 2001 U.S. Dist. LEXIS 15482 (N.D. Ill. Sept. 25, 2001). On appeal, the Seventh Circuit affirmed the dismissals with the exception of one statutory claim of one dealer. Cromeens, Hollomon, Sibert, Inc. v. AB Volvo, 349 F.3d 376, 2003 U.S. App. LEXIS 22859 (7th Cir. Nov. 7, 2003), reh’g denied, 2003 U.S. App. LEXIS (7th Cir. Dec. 17, 2003). In a subsequent appeal following trial in Chicago, the Seventh Circuit held that the scope of a “franchise” protected from termination without “good cause” is limited to the trademark that the dealer, distributor, or franchisee has been authorized to use. FMS, Inc. v. Volvo Construction Equipment North America, Inc., 2009 U.S. App. LEXIS 4938 (7th Cir. March 4, 2009), rev’g 2007 U.S. Dist. LEXIS 19577 (N.D. Ill. March 20, 2007). We defeated preliminary injunction motions brought by terminated Volvo Construction dealers in federal courts in Hartford, Connecticut and Kansas City, Kansas and by a Volvo Rents franchisee in Memphis, Tennessee. F&W Equipment Corp. v. Volvo Construction Equipment North America, Inc., Bus. Franchise Guide (CCH) ¶ 12,028 (D. Conn. March 7, 2001); Victor L. Phillips Co. v. Volvo Construction Equipment North America, Inc., Case No. 02-2144-JAR, 2002 U.S. Dist. LEXIS 11297, 2002 U.S. Dist. LEXIS 11354 (D. Kan. June 3, 2002); JEH, Inc. v. Volvo Construction Equipment Rents, Inc., Civ. Action No. 2:05cv2509 (W.D. Tenn. 2005). In federal court in Trenton, New Jersey, we obtained pre-trial rulings limiting the damages recoverable for violation of the New Jersey Franchise Practices Act and dismissing ancillary non-statutory claims. Harter Equipment, Inc. v. Volvo Construction Equipment North America, Inc., Bus. Franchise Guide (CCH) ¶ 12,651 (D.N.J. Sept. 2, 2003).

- Represented Volvo Construction Equipment N.A, in winning a March 2009 federal appellate ruling that reversed a jury verdict for the plaintiff and held that Volvo properly terminated the plaintiff’s Samsung

dealership when Volvo bought Samsung and discontinued that line of equipment. The case is significant in establishing that state franchise laws cannot require a manufacturer who stops selling a line of products to provide a former dealer a franchise for the new line of products offered by that manufacturer. The opinion is also significant in that the Court of Appeals entered judgment as a matter of law on appeal.

- The U.S. District Court for the Western District of Tennessee had previously granted preliminary injunctive relief in favor of an equipment dealer that was also selling a competitor's products. The district court based its ruling on a finding that the exclusivity provisions in YALE® forklift dealer agreements were invalid under a Tennessee statute prohibiting "coercion" of retailers not to sell competing manufacturers' products. Foley was retained to take the lead in briefing and arguing the appeal to the Sixth Circuit. Citing numerous precedents involving motor vehicle dealers that had been decided under the Auto Dealer's Day in Court Act, we argued that mere enforcement of an exclusivity provision is not unlawful "coercion." The Sixth Circuit agreed, finding that "the mere presence of the Exclusivity Provision does not constitute coercion and that the Exclusivity Provision is not void and is enforceable." *NACCO Materials Handling Group, Inc. v. Toyota Materials Handling USA, Inc.*, 2007 U.S. App. LEXIS 20423 (6th Cir. Aug. 22, 2007) (unpub. op.).
- Represented Papa John's International, Inc. in the U.S. District Court for the Northern District of Illinois in the pursuit of civil RICO, Lanham Act, and breach of contract claims against Antoin (Tony) Rezko. Rezko at one time was the largest Papa John's franchisee in the system, operating restaurants in Illinois, Michigan, Wisconsin, and Canada. We pursued the former franchisee for breach of various payment and post-termination de-identification and non-competition obligations. As part of a contempt sanctions motion for Rezko's violation of a preliminary injunction, we had a team of private investigators visit every one of his restaurants in the Chicago and Detroit metropolitan areas. Discovery revealed that Rezko had been using his franchised restaurants as part of a "money laundering" operation. Later, the U.S. Attorney's Office for the Northern District of Illinois subpoenaed our deposition transcripts and exhibits. Based on the civil complaint that we had filed on behalf of Papa John's, federal prosecutors indicted Rezko and obtained his criminal conviction on racketeering and other charges.

## Awards and Recognition

- Named to BTI Consulting Group's coveted Client Service All Star Team (2016). This honor is bestowed upon individual attorneys who deliver outstanding client service according to corporate counsel interviewed at large organizations with \$1 billion or more in revenue.
- Peer Review Rated as AV Preeminent®, the highest performance rating in Martindale-Hubbell® Peer Review Ratings™.
- Named a "Legal Eagle" by *Franchise Times* magazine.
- Listed in *The International Who's Who of Franchise Lawyers* (2006 – 2009).

- Voted among “The Legal Elite, Virginia Top Lawyers” by Virginia Business Magazine in the areas of civil litigation and information technology/intellectual property.
- Rated as one of the top Franchising attorneys in the nation by *Chambers USA* (2008 – 2024).
- Selected by his peers for inclusion in *The Best Lawyers in America*® in the field of Franchise Law since 2013.
- Selected for inclusion in the 2013 – 2016 Washington, D.C. Super Lawyers lists for his work in business litigation, franchise/dealership and intellectual property litigation.

## Affiliations

His professional affiliations include:

- Advisory Board, *World Internet Law Report*, *World Licensing Law Report*, *BNA International*, London
- Editorial Board, *Franchise Law Journal*, ABA Forum on Franchising
- Board of Governors, Virginia State Bar Antitrust, Franchise and Trade Regulation Section (1991-98; chair 1997-98)
- Board of Governors, Virginia State Bar International Practice Section (1994-98)
- Board of Governors, Virginia State Bar Young Lawyers Conference (1988-92)
- Chair, Distribution & Franchise Committee (f/k/a Franchise & Dealership Committee, ABA Section of Antitrust Law (1996-99)

## Presentations and Publications

### Presentations

Michael has also presented at numerous seminars and meetings. These include:

- “Dealer Termination and Resale Price Maintenance,” Advanced Distribution Workshop: Antitrust and Advertising Issues, ABA Section of Antitrust Law (September 1999)
- “Challenges of the Internet for Agency, Distribution, and Franchising Agreements: Impact of New Technologies on Traditional Sales Methods,” International Bar Association, Zurich, Switzerland (March 1999)
- “Intellectual Property Protection in Cyberspace,” Offshore e-Commerce Seminar, IBC USA Conferences, Inc. (New York City – September 1999; Miami – February 2000)
- “Judicial Update,” presented at the International Franchise Association Annual legal Symposium (May 2005)
- “The Pros and Cons of Arbitrating Franchise Disputes,” co-author, presented at the American Bar Association 28th Annual Forum on Franchising (October 2005)
- “The ‘F’ Word: Are Your Company’s Dealers, Distributors, or Licensees Protected By Federal and State Franchise Laws?” (speaker), presented at Drive Your Business Forward: Distribution & Franchise Law Update (moderator) (Washington, D.C. – January 24, 2008)
- “Discriminatory Treatment Under the PMPA, Federal Antitrust Law, and State Law,” Petroleum Marketing Attorneys’ Meeting (Washington, D.C. – April 1, 2008)



- “Intellectual Property in Distribution & Franchise Agreements: A License to Fix Prices?,” 17th Annual Law of Product Distribution & Franchise Seminar (Milwaukee, Wisconsin – May 6, 2008)
- “Lessons Learned in Litigation: Franchise Agreement Drafting,” International Franchise Association Annual Legal Symposium (Washington, D.C. – May 11, 2008)
- “Franchising in the South Asian Community,” Fifth Annual North American South Asian Bar Association Convention (Chicago, Illinois – June 26, 2008)
- “The ‘F’ Word: Are Your Company’s Dealers, Distributors, or Licensees Protected By Federal and State Franchise Laws?” (speaker), presented at Drive Your Business Forward: Distribution & Franchise Law Update (moderator) (Palo Alto, California – September 25, 2008)
- “The ‘F’ Word: Are Your Company’s Dealers, Distributors, or Licensees Protected By Federal and State Franchise Laws?” (speaker), presented at Drive Your Business Forward: Distribution & Franchise Law Update (moderator) (Irvine, California – September 26, 2008)
- “Litigating a Claim Under the Petroleum Marketing Practices Act (PMPA),” ABA Annual Forum on Franchising (October 16, 2008)
- “Making Lemonade Out of Lemons: How to Consolidate Distribution Without Breaking the Litigation Bank,” 18th Annual Law of Product Distribution & Franchise Seminar (Milwaukee, Wisconsin – May 13, 2009)
- “Valuation Framework” (moderator), Navigating Uncertainty: Patent Values and the Evolving IP Market Webinar Series presented with Grant Thornton LLP (May 26, 2009)
- “Valuation of IP in a Business Transaction” (moderator), Navigating Uncertainty: Patent Values and the Evolving IP Market Webinar Series presented with Grant Thornton LLP (June 25, 2009)
- “Valuation of IP in Litigation” (speaker), Navigating Uncertainty: Patent Values and the Evolving IP Market Webinar Series presented with Grant Thornton LLP (July 30, 2009)
- “Preliminary Injunctive Relief to Protect Trade Secrets and Enforce Non-Competes: Is It Possible to Put The Toothpaste Back in the Tube?,” (speaker) Trade Secret & Noncompete Agreements: What You Need to Know Web Conference Series (December 2009)
- “Trade Secret Issues in the Automotive Supply Chain,” Original Equipment Suppliers Association Regional Meeting in Chicago for Auto Suppliers: Strategic Issues & Industry Forecasts (November 2011)
- “Lessons Learned in Privacy Litigation,” American Conference Institute’s 11th Annual Legal & Compliance Forum on Privacy & Security of Consumer and Employee Information (February 2012)
- “Keeping Your Company’s Trade Secrets from Becoming “Road Kill” on the Information Superhighway,” Original Equipment Suppliers Association Legal Corner (April 2012)
- “The World Wide Web of Threats to Your Company’s Confidential Information: Lessons Learned in Trade Secret and Computer Crimes Litigation,” Foley’s 21st Annual Law of Product Distribution & Franchise Seminar (May 2012)
- “Lost in Cyberspace? Best Practices for Maintaining Security on the Internet and in the Cloud,” Washington Metropolitan Area Corporate Counsel Association (September 2012)
- “Protection of Franchise System Trade Secrets and Confidential Information, and Enforcement of Non-Disclosure Agreements in the Digital Age,” ABA Forum on Franchising (October 2012)

## Publications

Michael is a frequent author on franchising and distribution issues. His many publications include:

- Co-author, “Franchising and Insolvency,” in Lexology’s Franchise Practice Guide (4th ed.) (March 2022)
- “Leegin’s 10-Year Checkup: No Big Changes in the Marketplace,” *Law360* (June 28, 2017)
- “Franchise Termination Restrictions: A Guide for Practitioners and Policy Makers,” *The Antitrust Bulletin* (Winter 1985)
- “Avoiding Collisions With Franchise Laws on the Information Superhighway,” *The Computer Lawyer* (October 1998)
- Editor-in-chief of “The Franchise Trade Secrets Handbook” (2000) and the “Franchise Law Bibliography” (1993), published by the ABA Forum on Franchising
- Editor of “Franchising (& Distribution) Currents,” published by the *ABA Franchise Law Journal* (Spring 2000)
- “Revisionist History? Kicking the Tires of J. Michael Dady’s Market Withdrawal Cases,” *ABA Franchise Law Journal* (Spring 2002)
- “Can Franchise Consultants Practice Law?,” *ABA Franchise Law Journal* (Summer 2002)
- “The More, the Merrier? New York Federal Court Refuses to Dismiss Replacement Dealers Named as Co-Defendants,” *ABA Franchise Law Journal* (Fall 2003)
- “Market Withdrawal: Judges and Juries Aren’t Buying What Terminated Dealers Are Selling,” *ABA Franchise Law Journal* (Winter 2003)
- Editor of “Franchising (& Distribution) Currents,” published by the *ABA Franchise Law Journal* (Spring 2004)
- “Looking Anew at Accounting Duties,” *New York Law Journal* (April 2004)
- Editor of “Franchising (& Distribution) Currents,” published by the *ABA Franchise Law Journal* (Summer 2004)
- Editor of “Franchising (& Distribution) Currents,” published by the *ABA Franchise Law Journal* (Winter 2005)
- Editor of “Franchising (& Distribution) Currents,” published by the *ABA Franchise Law Journal* (Spring 2006)
- “Lessons for Intellectual Property Owners,” *Foley Legal News Alert: Antitrust* (August 22, 2006)
- “Lessons for Intellectual Property Owners,” *IP Law360* (August 31, 2006)
- “Federal Legislation Would Invalidate Arbitration Clauses in Franchise, Consumer, and Employment Agreements,” *Foley Legal News Alert: Distribution & Franchise* (July 25, 2007)
- “Supreme Court Abandons Century-Old Per Se Rule Against Resale Price Maintenance,” *Foley Legal News Alert: Antitrust* (July 28, 2007)
- “Franchising After *Leegin*: A License to Fix Prices?,” *Franchise Law Journal* (September 24, 2007)
- “Arbitration Fairness Act of 2007: A Trial Lawyer’s Dream, A Client’s Nightmare,” *Franchise World* (November 30, 2007)

- “‘Mixed Signals’ From Washington? Senators Propose Restoring Automatic Treble Damages for Manufacturers and Franchisors That Prohibit Discounting,” *Foley Legal News Alert: Distribution & Franchise* (December 5, 2007)
- “Supreme Court Limits Scope of Judicial Review of Arbitration Awards,” *Foley Legal News Alert: Distribution & Franchise* (April 3, 2008)
- “Dealer’s Claim of Antitrust Conspiracy to Fix Minimum Resale Prices Survives Summary Judgment Notwithstanding Supreme Court’s Decision in *Leegin*,” *Foley Legal News Alert: Distribution & Franchise* (June 25, 2008)
- “Legislation Invalidating Arbitration Clauses in Franchise, Employment, Auto Purchase and Lease, and Consumer Agreements Makes Headway in U.S. House of Representatives,” *Foley Legal News Alert: Distribution & Franchise* (July 25, 2008)
- “‘Fairness’ Looms In New Congress,” *The National Law Journal* (November 24, 2008)
- “Seventh Circuit Decision in Landmark ‘Market Withdrawal’ Case Eases Burden on Manufacturers and Franchisors Seeking to Consolidate Branded Distribution Systems,” *Foley Legal News Alert: Distribution & Franchise* (March 27, 2009)
- “Third Circuit Ruling Calls Into Question FDA’s Position on Whether High-Fructose Corn Syrup is ‘Natural,’” *Foley Legal News Alert: Food Industry* (September 2, 2009)
- “The FDA Stance on High-Fructose Corn Syrup,” Co-author, *Product Liability Law360* (October 15, 2009)
- “Deconstructing Franchisee Claims for ‘Constructive’ Termination and Nonrenewal – Implications of Supreme Court Petroleum Marketing Decision for Distribution and Franchise Generally,” *Foley Legal News Alert: Distribution & Franchise* (March 25, 2010)
- “When Are Class Disputes Properly Submitted to Arbitration?,” *Foley Legal News Alert: Litigation* (April 29, 2010)
- Co-author, “Avoiding and Managing System-Wide Litigation in International Franchising,” *International Journal of Franchising Law* (October 20, 2010)
- “Fourth Circuit Reverses U.S. District Court, Instead Allowing Franchisor to Recover ‘Future Damages’ From Terminated Franchisee,” *Foley Legal News Alert: Distribution & Franchise* (May 2, 2011)
- Co-author, Trade Secrets Chapter, *Intellectual Property Handbook* (2d ed. 2016), ABA Section Forum on Franchising and Section of Intellectual Property Law
- Editor-in-chief, *The Trade Secret Handbook: Protecting Your Franchise System’s Competitive Advantage*, ABA Forum on Franchising

## Sectors

- [Equipment & Industrial Product Manufacturing](#)
- [Food & Beverage](#)
- [Manufacturing](#)
- [Supply Chain](#)

## Practice Areas

- Antitrust & Competition
- Appellate
- Distribution & Franchise
- IP Litigation
- Litigation
- Patent Litigation
- Privacy, Security & Information Management
- Trade Secret Noncompete Litigation
- Trademark, Copyright & Advertising Litigation

## Education

- University of Virginia School of Law (J.D., 1984)
- University of North Carolina (B.A., 1978)
- Before attending law school, he served as a legislative assistant to U.S. Senator John Heinz from 1979-81, and was a research assistant to the Joint Economic Committee of the U.S. Congress from 1978-79.

## Admissions

- District of Columbia
- U.S. Supreme Court
- Virginia Supreme Court
- U.S. Court of Appeals for the Federal, Third, Fourth, Sixth, Seventh, Ninth and Eleventh Circuits
- U.S. District Court for the Eastern and Western Districts of Virginia, the Eastern Districts of Michigan and Wisconsin and, the District of Columbia.