



Intellectual Property Litigation



Parker Poe has extensive experience handling a full range of litigation matters, both in state and federal courts as well as in alternative dispute resolution settings, involving the intellectual property rights that are critical to the strength and success of any business venture in today's market. In addition, we counsel clients on the establishment, protection, and defense of trade secret and intellectual property rights, including licenses, acquisitions, and contracts.

We represent clients at all stages of litigation, from temporary restraining order and preliminary injunction hearings through discovery, trial, and appeal. We also evaluate potential intellectual property claims, advise clients on litigation prospects and risks, assist clients in achieving negotiated resolutions of disputes, and represent clients in mediation or before arbitration tribunals.

Our legal services include both asserting and defending against claims of:

- Patent infringement, particularly in the areas of mechanical devices, material compositions, pharmaceuticals, business methods, and software technologies.
- Infringement of both registered and unregistered marks under the Lanham Act and state law
- Copyright infringement, including the infringement of architectural works, under the Copyright Act
- Trade dress infringement
- Theft of trade secrets and unfair competition
- False advertising
- The validity and breach of confidentiality provisions and covenants not to compete
- Ownership of intellectual property rights
- Violation of the federal Computer Fraud and Abuse Act
- Violation of North Carolina's Unfair and Deceptive Trade Practices Act
- Related contract and business tort claims

REPRESENTATIVE EXPERIENCE

- *Genpharm, Inc. v. TorPharm, Inc.*, 5:97-CV-686-BO(3) (E.D.N.C. Mar. 8. 1999) – Represented a pharmaceutical manufacturer in a declaratory judgment action seeking a declaration that the '423 patent of defendant TorPharm, which claimed a "form of Form 1" ranitidine hydrochloride, was invalid and was not infringed by client's ranitidine product. After extensive discovery, the case was decided in favor of our client and another defendant with the judge granting summary judgment in our client's favor based largely upon the "on sale" bar. *TorPharm Inc. v. Novopharm, Ltd.*, 48 U.S.P.Q.2d 1471



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(E.D.N.C. 1998). The Court of Appeals for the Federal Circuit affirmed the decision. *TorPharm Inc. v. Genpharm Inc.*, 250 F.3d 754 (Fed. Cir. 2000). The United States Supreme Court denied TorPharm's petition for a writ of certiorari. 531 U.S. 1051 (2000).

- *aaIPHARMA Inc v. Barr Laboratories Inc, et al.*, 7:01 CV 150, 202, 208 F1 (E.D.N.C.). – Represented Par Pharmaceutical, defending a claim of alleged infringement of three patents relating to a polymorphic form of fluoxetine hydrochloride, which Eli Lilly sells under the trade name Prozac®. After discovery the case was settled on terms favorable to Par.
- *Warner-Lambert Company v. Apotex Corp., et al.*, 316 F.3d 1348 (Appeal No. 2-1073, United States Court of Appeals for the Federal Circuit) (2002). – Represented and filed an amicus brief for a generic pharmaceuticals manufacturers' association. This case principally involved issues concerning alleged inducement of infringement in a dispute about Warner Lambert's patents on a drug used to treat epilepsy and neurodegenerative diseases. The Court of Appeals decided the case on terms favorable to the generic association client.
- *aaIPHARMA Inc. v. Thompson*. 296 F.3d 227, 63 U.S.P.Q.2d 1670 (4th Cir. 2002). – Represented Par Pharmaceutical and Barr Laboratories in challenging the plaintiff's efforts to force the FDA to list one of plaintiff's patents in the so-called "Orange Book".
- *Granutec, Inc. v. Shalala*, 139 F.3d 889 (4th Cir. 1998) – Represented a generic pharmaceutical manufacturer in an action filed by our client's competitor against the Food and Drug Administration to rescind our client's statutory exclusivity to market its generic ranitidine hydrochloride product. The Court of Appeals for the Fourth Circuit affirmed our client's exclusive right to market its generic product.
- *Glaxo, Inc. v. Genpharm Pharmaceuticals, Inc.* – Represented a generic drug manufacturer that filed an ANDA for approval to manufacture a generic form of ranitidine hydrochloride in competition with Glaxo's Zantac, the world's largest selling prescription drug. Glaxo sued Genpharm in the U.S.D.C. for the Eastern District of North Carolina (No. 91-222-CIV-5-BO). The case was later transferred to Maryland (K-92-1831 U.S.D.C. D.Md.). After four and a half years of discovery and motion practice, including proceedings in the Court of Appeals for the Federal Circuit concerning the right to a jury trial in a patent dispute, the case was settled on the eve of jury selection. It is reported in various phases at 796 F. Supp. 872 (E.D.N.C. 1992), and 69 F.3d 553 (1995).
- *Glaxo-Wellcome Inc., et al. v. Genpharm Inc.*, No. 96-CIV-6719 (DAB) (S.D.N.Y., filed September 5, 1996) – Represented Genpharm, which was sued for patent infringement by Glaxo-Wellcome when Genpharm filed an abbreviated new drug application with the FDA seeking approval to market a generic version of Form 2 ranitidine hydrochloride in competition with Glaxo's Zantac. This case



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involved extensive and highly technical discovery. It was settled on the eve of trial by a consent judgment of non-infringement, which permitted Genpharm to obtain FDA approval to market its product.

- *Glaxo Wellcome v. H.T. Marketing Inc.*, 1:96-CV-00937 (M.D.N.C.) – Represented a defendant in a case where the plaintiff's company alleged that the defendant's over-the-counter medication, packaging and advertising materials infringed the plaintiff's trademark and trade dress rights. The case was settled in mediation following discovery.
- *Westfield Homes of the Carolinas, LLC, f/k/a Westfield Homes of North Carolina, Inc. v. Centex Real Estate Corporation, d/b/a/ Centex Homes*, 5:03-CV-192-H(3) (E.D.N.C. 2003) – Represented a major developer and builder of townhomes in an action alleging copyright infringement of architectural plans, trade dress infringement, and unfair trade practices against a competitor who was marketing townhomes, which our client contended were substantially similar to its own designs, on nearby property. The case was resolved by way of settlement following initial motions.
- Represented a major supplier of dental equipment in defending an action by a competitor for misappropriation of trade secrets, violation of the Computer Fraud and Abuse Act, and related claims. The case was resolved by settlement following extensive discovery.
- Represented a major discount wholesaler sued for trade dress infringement in the Eastern District of North Carolina and negotiated a favorable resolution.
- *Empire of Carolina, Inc., et al. v. Mac Plastics, Inc., et al.*, 4:97-CV-138 (E.D.N.C.) – Represented the defendant in an action in federal court alleging trade secret misappropriation, breach of nondisclosure and non-solicitation agreements, and unfair and deceptive trade practices. We successfully dissolved a temporary restraining order and defeated a preliminary injunction motion. After expedited discovery, the case was settled favorably.
- *TrustMark, Inc. and Charles Schwab & Co., Inc. v. Paul Watkins, individually, MobileHWY, Inc. and TeamVest, Inc., f/k/a TeamVest L.L.C.*, (Superior Court of North Carolina, Mecklenburg County 00-CVS412131) – Represented a software developer and manager in an action against an employee of the company and one of its customers for trade secret misappropriation and unfair competition. After obtaining an order of expedited discovery from the Superior Court in Mecklenburg County, the matter was settled favorably including the entry of a consent order permanently enjoining the defendants from certain conduct.
- *Omnitrade Industrial Co., Ltd. v. UNIPLET Company Ltd.*, 95-2489, (W.D.N.C.) – Represented a manufacturer and distributor of printing presses in an action in the United States District Court for the



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Western District of North Carolina involving a claim of trade dress infringement under the Lanham Act. After defeating a motion to dismiss for lack of jurisdiction, the matter was settled favorably.

- Represented a company in the business of selling and servicing accounting management and financial software in an action in the Mecklenburg County Superior Court alleging breach of a noncompete agreement, breach of a confidentiality provision, trade secret misappropriation, and unfair competition. We obtained an injunction on behalf of the client, preventing the defendant from violating the noncompete agreement and disclosing or using the trade secret information. We also successfully opposed an appeal of that injunction.