



Benjamin West Janke

Shareholder

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Benjamin Janke represents clients in a wide variety of commercial disputes, with a strong focus in trademark and copyright litigation matters, particularly within the media and technology industries.

Mr. Janke is a litigator whose practice is concentrated in intellectual property, media, and technology; business and construction litigation; commercial finance and secured lending; and credit data. His clients represent a variety of industries including media, technology, software, emerging company, construction, real estate, marine, health care, and heavy equipment.

Mr. Janke is a member of the Council for the Louisiana State Law Institute and also serves as a member of various committees. His record of legal scholarship is extensive, having published several law review articles in comparative law and law reform.

Intellectual Property, Media, and Technology

Mr. Janke has extensive experience in trademark, copyright, trade secret, unfair competition, media, and right of publicity cases. He manages several large trademark and copyright portfolios and also works to secure early intellectual property assets for emerging companies. For several of his media clients, he has extensive experience with the Digital Millennium Copyright Act (DMCA) and regularly navigates online legal issues including domain name disputes such as through the Uniform Domain-Name Dispute-Resolution Policy.

Business and Construction Litigation

Mr. Janke has handled several complicated business litigation matters, representing clients as both plaintiffs and defendants in judge and jury trials and injunction proceedings. In construction litigation, Mr. Janke regularly represents engineering, procurement, and construction companies, especially program managers.

Commercial Finance and Secured Lending

Mr. Janke has extensive experience in equipment finance and commercial lending and has worked to recover or restructure tens of millions of dollars of secured debt through commercial foreclosures and bankruptcies.

Representative Matters

- Successfully dismissed unjust enrichment claims against a multinational engineering, procurement, construction and installation company by an individual who claimed to have invented the concept and design used to contain the Deepwater Horizon oil spill.
- Successfully resolved a complex software copyright infringement claim spanning more than ten years of alleged infringement in multiple countries.
- Dismissed title insurer in complex matter involving more than twenty related lawsuits over ten years.
- Resolution of several trademark infringement disputes on behalf of mark owners and alleged infringers.
- Successfully prosecuted dozens of copyright and trademark applications.

- Successfully represented intellectual property owners in claims involving the Digital Millennium Copyright Act (DMCA), including in the context of social media.
- Regular practice with issues involving public records requests and withholdings.
- Represented multiple data exchange companies in a variety of industries, including telecom and utilities, in a broad range of issues related to permissible use of data and collection practices.
- Successfully completed many large and high-profile commercial foreclosures.
- Successfully dismissed several claims against banks and other financial institutions for claims related to unfair debt collection practices and wrongful foreclosure.
- Managed and directed several large scale electronic document review and production projects involving millions of documents and attorney teams of upwards of eighty lawyers in a variety of industries, including management of highly sensitive and controlled information.
- Obtained a favorable verdict on behalf of several maritime industry clients in a \$4 million contract dispute involving a bareboat charter agreement.
- Successfully represented a university in a federal trademark application, demonstrating to the USPTO no likelihood of confusion for one part of the mark, and winning a motion for summary judgment before the Trademark Trial and Appeal Board (TTAB), thereby achieving the dismissal of another university's opposition to the mark in question.
- Defended a development company in a preliminary injunction brought by a commercial office tenant.
- Defended clients in a multi-million dollar breach of contract and tortious interference with a contractual relations claim related to the alleged entry into a bareboat charter agreement.
- Obtained dismissal, with prejudice, of all claims against an insurance broker in a contentious preference litigation brought by the trustee in a bankruptcy matter.
 - Obtain nearly \$1 million in judgments against defendants on behalf of a liquidating trustee in a lawsuit filed in the United States Bankruptcy Court for the Eastern District of Louisiana for turnover and breach of contract in a matter involving software, trademark, and copyright issues, and successfully defended against defendants' multi-million dollar counterclaim related to the software and to loss of business reputation.
- Obtained a dismissal of all claims against a licensing agent in a federal lawsuit alleging trademark infringement. The U.S. Court of Appeals for the Fifth Circuit affirmed the dismissal and the U.S. Supreme Court denied writs.



Professional Honors & Activities

- Listed as a Louisiana Rising Star in *Louisiana Super Lawyers* (2013 – 2023)
- Listed in *The Best Lawyers in America*® for Construction Law (2021 – 2024); Litigation - Intellectual Property and Trademark Law (2023, 2024)
- *New Orleans City Business* 2015 Leadership in Law class
- Recognized as a "Top Lawyer" in Intellectual Property Law by *New Orleans Magazine* (2015, 2017, 2019, 2022, 2023)
- Recipient – Baker Donelson's Pro Bono Attorney of the Year Award for the New Orleans office
- Featured – "Ones to Watch," *New Orleans City Business* (February 20, 2014)
- Bar Associations (Louisiana State Bar Association; New Orleans Bar Association; Federal Bar Association; American Bar Association)
- Member – International Trademark Association
- Member – The Federalist Society
- Member and Treasurer – Louisiana Supreme Court Historical Society
- Member – Historic New Orleans Collection
- Member – Louisiana State Law Institute Council (Member, Prescription Committee; Lease Movables Act Committee)
- Member – Association Henri Capitant (Louisiana Chapter)
- Order of the Coif

- Vinson and Elkins Award for Best Comment or Case Note
- Comité scientifique - *Scientia juris* (Université Paul Verlaine - Metz)



Publications

- "Bottled in Bone: Court Sides with Jack Daniel's in Dog Toy Dispute – Trademark Fair Use is Limited" (June 2023)
- "Taco Bell Seeks Cancellation of the "Taco Tuesday" Trademark" (May 2023)
- Co-author – "Have Your Cake and Own it Too," *Intellectual Property Magazine* (October 2021)
- Co-author – "Have Your Cake and Own it, Too: Trademark and Branding Best Practices and Takeaways from a Dispute between a King Cake Baker and its Brand Developer" (August 2021)
- Co-author – "Leveraging Intellectual Property to Mitigate Web Spoofing, Phishing Attacks, and other Deliberate Acts of Confusion on the Internet" (July 2021)
- Co-author – "Unsung Hero: Allison Guste, LCMC Health," *Women's Initiative Newsletter* (May 2021)
- Co-author – "'ZOOM-ing' In on Virtual Trials: Four Key Considerations for Success," *Trial Spotlight Newsletter* (August 2020)
- Co-author – "Booking.com? Booking.yeah! Supreme Court Weighs In On Trademark Protection for Generic Terms Combined with Generic Top-Level Domains" (July 2020)
- Co-author – "COVID-19: Much-Needed Liability Relief for Louisiana's Restaurant Industry" (June 17, 2020)
- Co-author – "Supreme Court Clears an Obstacle to Profit Awards for Trademark Owners, But Doesn't Completely Flush "Willfulness"," republished in *IAM* (May 2020)
- Co-author – "Supreme Court: You Can Trademark Whatever the ®®® You Want (Maybe?)," *JD Supra* (June 2019); republished in *IAM Weekly International Report* (July 2019); republished in TerraLex (October 2019)
- "Supreme Court Resolves Circuit Split to Hold that a Licensee's Trademark Rights Survive Following Rejection of the License in Bankruptcy," (May 2019); republished in *IAM Weekly International Report* (June 2019)
- Co-author – "165-Year-Old Brand Alleges Trademark Infringement Against Best-Selling Video Game," *IAM Weekly International Report* (February 2019)
- Co-author – "A Step in the Right Direction: US and EU Courts Protect Trademark for Red-Soled Heels," *IAM Weekly International Report* (September 2018)
- "Saints Victory Party Set The Stage For Important Guidance," *Law360* (May 2014)
- Co-author – "Statutes of Limitation in Civil Copyright Claims: The Unfinished Business of the Courts," *Intellectual Property, Entertainment & Sports Law Section of the Alabama State Bar Newsletter* (November 2013)
- Featured – "The Sound of Music: Get the Right License for Music Rights," *Entrepreneur Minute* (July 2013)
- "Hershey's Protects Candy Bar Design," *Hospitalitas Newsletter* (August 2012)
- Co-author – "Planning for Granny: A Practical Guide to Personal Service Contracts," CLE Presentation, Louisiana State Bar Association (June 2012)
- Co-author – "Deposing Business Entities: Your Most Valuable Discovery Device," Louisiana Bar Association Continuing Legal Education Program (November 2011)

Legal Scholarship

- "Harry Dondorp, David Ibbetson, and Eltjo J. H. Schrage (eds.), Limitation and Prescription: A Comparative Legal History," *Journal of Civil Law Studies* (2020)
- "Dictionary of the Civil Code," 63 *Louisiana Bar Journal* 268, Book review (2016)
- Co-author – "Приведение в исполнение иностранных судебных решений о штрафных убытках во Франции после дела Fountaine Pajot," (Enforcing Punitive Damages in France after Fountaine Pajot), Вестник экономического правосудия Российской Федерации (Journal of Economic Justice of the Russian Federation), No. 9/2015, p. 114 (January 2015)

- Co-author – "Les conflits des lois en matière de dommages-intérêts punitifs: l'expérience de la Louisiane ," *85 Revue Lamy droit des affaires* 4750 , ("Conflict Of Laws in Relation to Punitive Damages: The Louisiana Experience") (2013)
- Co-author – "Enforcing Punitive Damage Awards in France after Fountaine Pajot," *60 American Journal of Comparative Law* 775 (2012)
- Co-author – "Des rives de la Seine à celles du Mississippi: le fabuleux destin de la maxime contra non valentem agere non currit praescriptio," *63 Revue internationale de droit comparé* 809 (2011)
- Co-author – "Contra Non Valentem France and Louisiana: Revealing the Parenthood, Breaking a Myth," *71 Louisiana Law Review* 503 (2011)
- Co-author – "The French Revision of Prescription: A Model for Louisiana?," *85 Tulane Law Review* 1 (2010)
- "Government Liability in Tort under a Hundred Year Flood Plan," *36 Southern University Law Review* 11 (2008)
- "The Failure of Louisiana's Bifurcated Liberative Prescription Regime," *54 Loyola Law Review* 620 (2008)
- "Revisiting *Contra Non Valentem* in Light of Hurricanes Katrina and Rita," *68 Louisiana Law Review* 497 (2008)



Speaking Engagements

- Panelist – "Trying Cases by Zoom," New Orleans Bar Association CLE (December 2020)
- "Family law," Pro Bono Project CLE (November 2017)
- "Jury Trial Opening Statements," Louisiana Bar Association (October 2017)
- "Intellectual Property Pitfalls and Q&A with the Patent and Trademark Office," 2017 Louisiana Life Sciences and Technology Symposium (September 2017)
- "Intellectual Property and Advertising for Brewers and Distillers," NBI, New Orleans (September 2016)
- "All in the Family - Pro Bono Cases," CLE (2014 – 2015)
- Panelist – "The Dictionary of the Civil Code," CLE (March 2015)
- "Immoral, Scandalous, Deceptive, Disparaging, and Contemptuous Trademarks," Baker Donelson IP Group (July 2014)
- "Recent Developments in Personal Jurisdiction," Baker Donelson Business Litigation Group (July 2014)
- LOUISIANA! Pick Your Passion! (And Your First Amendment Rights): An Analysis of the Trademark Dispute in *Jay Dardenne v. Moveon.org* (May 2014)
- "Intellectual Property Basics for Emerging Companies," Baker Donelson Emerging Company Boot Camp, New Orleans Entrepreneur Week, New Orleans, Louisiana (March 2014)
- "French Law for the 21st Century Louisiana Lawyer," Francophone section of the Louisiana Bar Association, Lafayette, Louisiana (October 2013)
- "Statutes of Limitation in Civil Copyright Claims: The Unfinished Business of the Courts," Baker Donelson Intellectual Property Group (September 2013)
- "It's Not Too Late if We Both Agree - Recent Changes to the Civil Code Prescription Articles by the Louisiana Law Institute," New Orleans Bar Association, Real Property Committee (June 2013)
- "Intellectual Property Basics for Emerging Companies," Baker Donelson Emerging Company Boot Camp, New Orleans Entrepreneur Week, New Orleans, Louisiana (March 2013)
- "Survey of Rule Changes in Jurisdiction, Venue, and Removal in 2012," Business Litigation Practice Group (January 2013)
- "The Federal Courts Jurisdiction and Clarification Act of 2011," New Orleans Bar Association CLE – Litigation Lessons for Lawyers (November 2012)
- "What's In a Name? Trademarks and Your Business Name," Baker Donelson Entrepreneur Minute (June 2012)

- "Intellectual Property Basics," Baker Donelson Emerging Company Institute, Louisiana Technology Park, Baton Rouge, Louisiana (November 2011)
- "Security Interests in Intellectual Property," Baker Donelson Intellectual Property Group (May 2011)
- "Intellectual Property Basics," Baker Donelson Emerging Company Boot Camp, New Orleans Entrepreneur Week, New Orleans, Louisiana (March 2011)



Education

- Paul M. Hebert Law Center at Louisiana State University, J.D. & B.C.L., 2008, magna cum laude
 - Production Editor, Member – *Louisiana Law Review*
 - Member – The Civilian Society
 - Member and Vice President – The Federalist Society
 - Member – Wex Malone American Inn of Court
- Vanderbilt University, Master of Education, 2005
- Vanderbilt University, B.S., 2004, magna cum laude



Admissions

- Louisiana (All Courts)
- U.S. Supreme Court
- U.S. Court of Appeals, Fifth Circuit
- U.S. District Courts, Eastern, Middle and Western Districts of Louisiana