

## JERRE B. SWANN

Mr. Swann graduated from Williams College in 1961 where he was a National Merit Scholar and was elected to Phi Beta Kappa. As a Rotary Foundation Fellow, he then studied jurisprudence at the University of St. Andrews in Scotland, and in 1962, he entered Harvard Law School, graduating in 1965. He clerked for two years for the Hon. Dudley B. Bonsal in the Southern District of New York, and in October 1967, he joined Kilpatrick Townsend, becoming a partner in 1972.

Mr. Swann has increasingly devoted his practice to the litigation of trademark and unfair competition claims, both locally and nationally. He has served as lead counsel (or as special counsel in connection with survey and expert witness issues) on behalf of, *inter alia*, AT&T, adidas, AFC (Popeyes Fried Chicken), Alcon, Amazon, American Eagle Outfitters, Anheuser-Busch, Apple, BellSouth, Blockbuster Video, Blue Cross/Blue Shield Association, Cartier, Chrysler, Clear Channel Communications, Collegiate Licensing, Country Music Association, Delta Airlines, Diageo, DuPont, Fox, Frito-Lay, Gaylord (Grand Ole Opry), General Electric, General Foods, General Mills, Georgia Pacific, Genesco, Hanes Brands, Harley-Davidson, Hewlett-Packard, Honey Baked Ham, Houghton-Mifflin, Imax, Intel, NFL Properties, Nestle (various entities), 1-800-Flowers, Original Appalachian Artworks (Cabbage Patch Kids), Pfizer, Ray-O-Vac, Richemont, Pepsico, Sara Lee, Smith & Nephew, Tandy (Radio Shack), U-Haul, University of Alabama and Waffle House.

Reported decisions in cases in which he has been involved include: Louisiana State University v. Smack Apparel Co., 550 F.3d 465 (5<sup>th</sup> Cir. 2008); H-D Michigan, Inc. v. Top Quality Service, Inc., 496 F.3d 755 (7<sup>th</sup> Cir. 2007); Trust Co. of Georgia v. Houghton-Mifflin Co., 268 F.3d 1257 (11<sup>th</sup> Cir. 2001), Chrysler Corp. v. Silva, 118 F.3d 56 (1st Cir. 1997), Imagineering, Inc. v. Van Klassens, Inc., 53 F.3d 1260 (Fed. Cir. 1995), Original Appalachian Artworks, Inc. v. S. Diamond Assocs., 44 F.3d 925 (11th Cir. 1995), Amstar Corp. v. Domino's Pizza, Inc., 615 F.2d 252 (5<sup>th</sup> Cir. 1980); Original Appalachian Artworks, Inc. v. McCall Pattern Co., 649 F. Supp. 832 (N.D.Ga. 1986), aff'd 825 F.2d 355 (11th Cir. 1987), Prufrock Ltd., Inc. v. Lasater, 781 F.2d 129 (8th Cir. 1986), Southern Bell Tel. & Tel. v. Associated Tel. Directory Publishers, 756 F.2d 801 (11th Cir. 1985), Amstar Corp. v. Domino's Pizza, Inc., 615 F.2d 252 (5th Cir. 1980), Texas Tech University v. Spiegelberg, 461 F. Supp. 2d 510 (N.D.Tex. 2006); Adidas-Salomon AG v. Target Corp., 228 F. Supp.2d 1192 (D. Ore. 2002), Gaylord Entertainment Co. v. Gilmore Entertainment Group, 187 F. Supp.2d 926 (M.D. Tenn. 2002), Meadowcraft Inc. v. Compex Int'l Co., 47 U.S.P.Q.2d 1665 (N.D.Ga. 1998), Delta Air Lines v. Hudson, 868 F. Supp. 1383 (N.D.Ga. 1994) and Original Appalachian Artworks, Inc. v. Schlaifer Nance & Co., 679 F. Supp. 1564 (N.D.Ga. 1987).

He has co-edited, with Shari Diamond, *Trademark and Deceptive Advertising Surveys* (authoring chapters on Likelihood of Confusion and Dilution Surveys and on Critiques). He has authored the chapter, "U.S. Trademark Surveys," in R. M. Corbin and A. K. Gill (eds), *Survey Evidence and the Law Worldwide* (2007) and the chapters, "The Evolution of Dilution in the United States from 1927 to 2006" and "The Evolution of Dilution in the United States from 1927 to 2006 (and A Few Months Beyond)" in the first and second editions of Daniel Bereskin (ed.), *International Trademark Dilution* (2013 and 2015).

He has authored numerous articles on trademark subjects, including: Bringing Home the Nonresident Infringer; How Long or Short Should the Jurisdictional Arm Be?, 62 TMR 267 (1972); The Validity of Dual Functioning Trademarks: Genericism Tested by Consumer Under-

standing Rather Than by Consumer Use, 69 TMR 357 (1979); The Economic Approach to Genericism: A Reply to Folsom and Teply, 70 TMR 243 (1980); Bald Protectionism or a Balanced Review: A Reply to Lunsford and Cohrs, 33 MERCER L. REV. 1205 (1982); The Design of Restaurant Interiors--A New Approach to Aesthetic Functionality, 76 TMR 408 (1986); Anti-Monopoly: An Exercise in Economic Futility, 78 TMR 65 (1988); The Configuration Quagmire: Is Protection Anticompetitive or Beneficial to Consumers, and the Need to Synthesize Extremes, 87 TMR 253 (1997); Genericism Rationalized, 89 TMR 639 (1999); An Intuitive Approach to Dilution, 89 TMR 907 (1999); Dilution Redefined for the Year 2000, 90 TMR 823 (2000); The Perfect Brand, 91 TMR 1106 (2001); Dilution Redefined for the Year 2002, 92 TMR 585 (2002); INTA and Dilution, 93 TMR 159 (2003); Dilution Surveys, Amer. Mktg. Ass'n (May 2003); Dilution Surveys after V. Secret, AIPLA (October 2003); A Reading Test or a Memory Test: Which Survey Methodology Is Correct?, 95 TMR 876 (2005); An Interdisciplinary Approach to Brand Strength, 96 TMR 943 (2006); Sophistication and the Sciences, 97 TMR 1309 (2007); Likelihood of Confusion Studies and the Straited Scope of Squirt, 98 TMR 739 (2008); The TMR as Catalyst, 101 TMR 81 (2011); Confusion Factor Analysis – A Cognitive Update, 101 TMR 1223 (2011); The Evolution of Dilution in the United States from 1927 to 2013, 103 TMR 721 (2013); Likelihood of Confusion Surveys, Advance Trademark Law Annual Review 2014 (April 2014); Judge Richard Posner and Consumer Surveys, 104 TMR 918 (2014); The Evolution of Trademark Economics – from the Harvard School to the Chicago School to WIPO 2013 – as Shepherded by INTA and The Trademark Reporter, 104 TMR 1132 (2014); and Eveready and Squirt – Cognitively Updated, \_\_ TMR \_\_ (2016).

He has co-authored other articles on trademark subjects, including: Trade Names, Trademarks, Copyrights and Unfair Competition, 27 Encyclopedia of Georgia Law 381 (1974); The Thirty-Third Year of Administration of the Lanham Trademarks Act of 1946, 70 TMR 493 (1980); An Analysis of the Ives Case: A TMR Panel, 72 TMR 118 (1982); Surveying "Genericness": A Critique of Folsom and Teply, 78 TMR 179 (1988); USTA's Amicus Brief in Two Pesos, Inc. v. Taco Cabana International, Inc., 82 TMR 440 (1992); Dilution, an Idea Whose Time Has Gone; Protecting Brand Equity as Property, the New/Old Paradigm, 84 TMR 267 (1994); INTA's Amicus Brief in Samara Bros., Inc. v. Wal-Mart Stores, Inc., 89 TMR 986 (1999); INTA's Amicus Brief in Traffix Devices, Inc. v. Marketing Displays, Inc., 90 TMR 897 (2000); Trademarks and Marketing, 91 TMR 787 (2001) (with Dr. David Aaker); INTA's Amicus Brief in Taylor Corporation v. Sigma Chi Fraternity, 92 TMR 708 (2002); INTA's Amicus Brief in Moseley v. Victoria Secret Catalogue, 92 TMR 1139 (2002); and Configuration Protection Harmonized, 94 TMR 1182 (2004).

He has spoken at a number of local and national seminars dealing with trademark subjects: Generic Trademarks presented by the Practicing Law Institute in New York City in December, 1982; Proving a Likelihood of Confusion in Trademark Cases presented by the Southwest Legal Foundation in Dallas in April, 1985; Intellectual Property Considerations for New Ventures: A Program for Business Lawyers, presented by the Younger Lawyers Division of the American Bar Association at the Annual Meeting in Washington, D.C. in July 1985; Intellectual Property/Antitrust Law, presented by the State Bar of Georgia in August, 1987; Patent, Trademark & Copyright Seminar, presented by the Georgia Institute of Continuing Legal Education in October, 1992; Should a Horse of Another Color Be Registrable?, presented by INTA in Naples, Florida in November, 1994; 43(a) Protection - Par for the Course or Out of Bounds, presented by the American Intellectual Property Lawyers Association in San Antonio in May, 1997; Legal

Experts in Trademark Cases, presented by the Southwest Legal Foundation in Dallas in November, 1999; Examination of Survey Witnesses, presented at INTA's Trademark Trial Advocacy Workshop in Chicago in July, 2000; Dilution Redefined, presented as the Katz-Kiley Lecture in Houston in November, 2000; Developments in Trademark Dilution, presented by the National CLE Conference in Vail, Colorado, January 12, 2001; Damages in Trademark Cases, presented by AIPLA's Mid-Winter Institute in Boca Raton, Florida, February 2, 2001; International Surveys, presented by INTA's Advanced Trademark Symposium in New York City, March 6, 2001; Trademarks and the First Amendment, presented in Los Angeles on April 6, 2001; Trademarks and Marketing; Battle for the Brand, presented by INTA and BNEF in New York City, February 28-March 1, 2002; Dilution and Possible Amendments to the Lanham Act, presented at INTA's Advance Trademark Symposium in Washington D.C., March 7, 2003; Surveys and Daubert Motions, presented at INTA's Annual Meeting in Amsterdam, Netherlands, May 3-7, 2003; Dilution Surveys, presented by the American Marketing Association in Washington, D.C., May 30, 2003; Dilution from the Plaintiff's Perspective presented to the Texas Bar Association in Houston, Texas on June 13, 2003; Recent Developments with respect to Trade Dress presented to the Houston Intellectual Property Law Association in Houston on October 18, 2003; Dilution Surveys after V. Secret presented at the AIPLA Annual Meeting in Washington, D.C. on October 30, 2003; Dilution Update presented at the Trademark Portfolio Acquisition and Protection seminar in Atlanta on December 8, 2003; Proof of Dilution after V. Secret presented at INTA's Advance Trademark Symposium in Charleston, South Carolina on February 23, 2004; Drawing the Line on Dilution presented at the Trademark Protection and Positioning seminar in Atlanta on February 26, 2004; and The Lawyer's Role in Developing Surveys for Litigation presented to the Intellectual Property Section of the Georgia Bar Association on March 7, 2006; Principal Features of the Trademark Dilution Revision Act presented to the Intellectual Property Section of the Georgia Bar Association on November 14, 2006; The Survey Blues: Litigation Survey Errors Causing Exclusion or Reduced Weight, INTA's Annual Meeting in Chicago, April 28-May 2, 2007; When Your Competitor Crosses the Line: Self-Regulation or Litigation?, Green Lights and Red Flags: FTC Rules of the Road for Advertisers, Atlanta, May 16, 2007; Awareness of Trade Marks, Marques 21<sup>st</sup> Annual Conference, Porto, Portugal, September 18, 2007; Cognitive Analysis of Confusion Factors, Dallas Trademark Bar, March 28, 2008; Likelihood of Confusion Surveys, Thomson Webinar, April, 2009; Economics, Marketing and Consumer Psychology: Driving the Evolution of Trademark Law, IP Innovations Class (October 8, 2009); Likelihood of Confusion Surveys, Strafford Webinar, March, 2014; Likelihood of Confusion Surveys, PLI Advanced Trademark Law Annual Review, April, 2014; An Overview of U.S. Trademark Law, IPLA of the U. of Georgia, March 6, 2015; How Much Confusion Is Enough?, dri Seminar, Chicago, May 1, 2015.

He has served as a director of the International Trademark Association (1989-91), and as the Domestic Articles Editor (1986-88) and Editor-in-Chief (1988-90) of The Trademark Reporter. He has also served, *inter alia*, on the Brief Amicus Committee, the Special Committee with respect to the TDRA, and the Dilution Committee. He is a member of INTA's panel of neutrals. He received the 2000 Ladas Memorial Award for his article, Dilution Redefined for the Year 2000, the 2002 INTA Volunteer Service Award for the Advancement of Trademark Law, and the 2009 INTA President's Award. He is an adjunct professor of Trademark Law at the University of Georgia Law School.