



→ Michael W. Scarborough

Partner

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Mike Scarborough is a partner and Practice Group Leader of the Antitrust and Competition Practice Group in the firm's San Francisco office.

Areas of Practice

Mr. Scarborough specializes in complex litigation, with extensive experience handling international cartel investigations, class actions, high-stakes commercial disputes, consumer protection matters, and litigation and investigations at the intersection of antitrust and intellectual property law. He regularly represents U.S. and multinational businesses in all phases of class action and direct plaintiff litigation, from pre-complaint investigation through trial and appeal, and frequently guides businesses and individuals through civil and criminal matters involving federal and state enforcement agencies. He has helped clients successfully manage – and avoid – disputes and investigations around the world.

Mr. Scarborough's tireless and determined client advocacy garner him regular industry recognition, with nods from the *American Lawyer* (Litigator of the Week), *Competition Law360*, *Chambers USA*, *Benchmark Litigation*, *Legal 500*, *Daily Journal*, *Best Lawyers in America*, *Acritas Stars* and *Super Lawyers*. Clients and commentators describe the "very impressive" Mr. Scarborough as "an excellent attorney who is detail-oriented, a strong writer and a strategic thinker" and a "fierce advocate with integrity and professionalism" (Chambers USA); "a great negotiator" and "an incredible legal tactician" (Acritas); and "a tough advocate, who is also professional and fair" (Legal 500).

Honors

Chambers USA, Antitrust, Ranked Individual, 2018-2021

Chambers USA, Antitrust, Up and Coming, 2016-2017

Litigator of the Week, *The American Lawyer*, February 25, 2016

Competition Law360 – Rising Star, (selected as one of the top 10 competition lawyers in the United States under the age of 40), 2010

Daily Journal, Top Antitrust Lawyer, 2020

Best Lawyers in America, Antitrust Law, 2020-2021

Recommended Lawyer – United States Antitrust, *Legal 500*, 2015-2020

Cartel

Civil litigation/class actions: defense

Merger Control

Litigation Star/Antitrust Star/California Litigation Star, *Benchmark Litigation*, 2009-2021

Star Lawyer, *Acritas Stars*, 2017-2020

Northern California Super Lawyer, *Super Lawyers*, 2014-2020

Experience

Representative Matters

Lead antitrust counsel for automotive component supplier as plaintiff seeking declaratory relief and determination and imposition of FRAND licensing terms in cutting-edge action challenging concerted refusal to license alleged standard essential patents relevant to cellular standards on FRAND terms and conditions.

Continental Automotive Systems, Inc. v. Avanci, LLC, Case No. 19-cv-2933-M (N.D. Tex.).

Secured complete dismissal of all claims against Samsung Electronics in boycott and monopsonization case relating to smartphone patent licensing, based on lack of antitrust standing and failure to allege a plausible conspiracy. Obtained affirmance of defense judgment on appeal to the Ninth Circuit Court of Appeals. *Cascades v. RPX Corp.*, Case No. 4:12-cv-1143 YGR (N.D. Cal.).

Representing leading global electronics manufacturer in patent and standards-related antitrust governmental proceedings and private antitrust actions involving major technology companies including Qualcomm and Apple.

On behalf of leading international provider of cybersecurity products, obtained complete dismissal of antitrust boycott and refusal to deal claims regarding testing standards development. *NSS Labs v. CrowdStrike, Inc.*, Case No. 5:18-cv-5711 BLF (N.D. Cal.).

As lead trial counsel, defended telescope manufacturer against price-fixing, market allocation and attempted monopolization claims, including six-week jury trial. *Optronic Technologies, Inc. v. Ningbo Sunny Electronic Co., Ltd.*, Case No. 5:16-cv-6370 EJD (N.D. Cal.).

Represented leading automotive parts manufacturing company against antitrust boycott claims. *O.E.M. Glass Network, Inc. v. Mygrant*, Case No. 1:19-cv-0742 NGG (E.D.N.Y.).

As national counsel, defended industry-leading global electronics companies in criminal and civil price-fixing actions regarding lithium ion rechargeable battery products. *In re Lithium Ion Batteries Antitrust Litig.*, MDL No. 2420.

Defended information technology services company and top executive with respect to criminal Sherman Act bid-rigging charges and related false claims and unfair competition civil action by California Attorney General.

As national counsel, represented multinational electronics companies in federal and state government enforcement and civil price-fixing class and opt-out actions regarding cathode ray tube products. *In re Cathode Ray Tube (CRT) Antitrust Litig.*, MDL No. 1917.

Defended leading global payments & technology company in coordinated class actions and related appeals concerning alleged payment card tying and network exclusionary practices. *In re Credit/Debit Card Tying Cases*, Cal. Jud. Council Coord. Proc. No. 4335.

Represented international electronics companies in criminal and civil price-fixing actions concerning thin film transistor liquid crystal display products. *In re TFT-LCD (Flat Panel) Antitrust Litig.*, MDL No. 1827.

For MediaNews Group and California Newspapers Partnership, blocked private antitrust challenge to acquisition of *Contra Costa Times* and *San Jose Mercury News*.

Secured dismissal of putative class action against leading global payments & technology company under California consumer privacy laws regarding highly publicized third party processor data security breach.

As national counsel, defended civil price-fixing and government enforcement actions against leading international electronics companies regarding dynamic random access memory chip products. *In re DRAM Antitrust Litig.*, MDL No. 1486.

Represented Mastercard in series of actions challenging foreign currency conversion practices under California Unfair Competition Law, including five-month trial and successful defense appeal of judgment in *Schwartz v. Visa International Service Association, et al.* (2005) 132 Cal.App.4th 1452 (rev. granted 2005; rev. dismissed 2007).

Represented largest independent publisher of yellow pages phone directories in California as plaintiff in below cost pricing, loss leader and secret rebate action under California Unfair Practices Act, favorably settling for a confidential amount. *AGI Publishing, Inc. v. YP Western Directory*, Fresno Superior Court, Case No. 14 CE CG 00656.

Obtained complete dismissal of sham litigation, predatory pricing and state unfair competition counterclaims in patent infringement action concerning electric grid voltage optimization technology. *RGA Varentec, Inc. v. GridCo, Inc.*, Case No. 16-217-RGA-MPT (D. Del.).

Defended international electronics companies in civil price-fixing class actions regarding static random access memory chip products. *In re SRAM Antitrust Litig.*, MDL No. 1819.

In numerous separate actions, defended and obtained favorable settlements for international electronics distribution and marketing companies against claims of false and misleading advertising of inkjet printers, MP3 players and hard disk drives, respectively, under California's Unfair Competition Law, False Advertising Law and Consumers Legal Remedies Act.

Obtained dismissal for leading global payments & technology company in representative action challenging payment card chargeback practices under California Unfair Competition Law.

Participated in successful trial defense of The Hearst Corporation in private antitrust action challenging acquisition of the *San Francisco Chronicle*. See *Reilly v. The Hearst Corporation, et al.* (N.D. Cal. 2000) 107 F. Supp.2d 1192, 2000-2 Trade Cas. (CCH) ¶ 72,992.

Articles

Profiles

- Litigator of the Week: Michael Scarborough of Sheppard Mullin, *The American Lawyer*, February 25, 2016
- Rising Stars: Sheppard Mullin's Michael Scarborough, *Competition Law360*, April 2010

Publications

- Congress Misses Opportunity to Bolster Flagging Cartel Enforcement through Whistleblowers (February 2021)
- Amnesty and Its Punishments: ACPERA and the Future of U.S. Antitrust Cartel Enforcement *The Legal 500 - Cartels Country Comparative Guide*, April 30, 2020
- Between a Rock and a Hard Place: Vitamin C and the Future of U.S. Antitrust Enforcement Against Chinese Companies, *The Legal 500 - Cartels Country Comparative Guide*, April 3, 2019
- Northern District of California Releases Comprehensive Procedural Guidance for Class Action Settlements, *Los Angeles & San Francisco Daily Journal*, November 15, 2018

- Inside The EU's Overcharge Pass-On Study, *Law360*, October 27, 2016
- The New Face of Antitrust Investigations in China, *Daily Journal*, October 23, 2013
- The Case For Eliminating ACPERA's Supplemental Cooperation Requirement For Amnesty Applicants, *Competition: The Journal of the Antitrust and Unfair Competition Law Section of the State Bar of California*, Vol. 20, No. 2, Fall 2011
- Contributing author, *Model Jury Instructions in Criminal Antitrust Cases*, ABA Section of Antitrust Law (2009)
- Contributing author, *California State Antitrust & Unfair Competition Law*, The State Bar of California Antitrust and Unfair Competition Law Section (2009)
- California Enacts New E-Discovery Rules (July 2009)
- Yes, We Really Do Have Amnesty: District Court Enforces DOJ Corporate Leniency Agreement, Dismisses Indictment Against Stolt-Nielsen And Company Executives (January 2008)
- IPO Underwriters Win Broad Antitrust Immunity In Supreme Court (July 2007)
- Plaintiffs Plead Your Plus Factors: Supreme Court Steps Up Antitrust Conspiracy Pleading Requirements (June 2007)
- Foreign Plaintiffs Challenging Global Cartels Strike Out Again In U.S. (March 2007)
- Second Circuit Affirms Dismissal of Merchant's Section One Challenges to MasterCard Rules (December 2006)
- Do We Really Have Amnesty?: Uncertainty Remains About DOJ Corporate Leniency Program After Third Circuit Throws Out Ruling Barring Indictments Against Stolt-Nielsen And Company Executive (May 2006)

Speaking Engagements

The Changing Landscape of Class Action Settlement Approval Under FRCP 23, Bar Association of San Francisco, Antitrust and Business Regulation Section, January 8, 2019

Procedural Steps and Pitfalls in Antitrust Class Actions, American Bar Association Section of Antitrust Law, May 14, 2018

IBRAC's 23rd Annual International Seminar on Competition Defense, Panelist: *Controversial Issues in Antitrust Civil Liability*; Foreign Speakers Roundtable
Campos do Jordão, São Paulo, Brasil, October 25, 2017

"How Do Companies Resolve Worldwide Claims – What are the Risks and Opportunities," International Developments in Private Competition Litigation Conference, Madrid, Spain, April 27, 2017

Memberships

American Bar Association, Antitrust Section

California Lawyers Association – Antitrust, UCL and Privacy Section

Executive Committee, Antitrust and Business Regulation Section of the Bar Association of San Francisco

Podcasts & Webinars

Nota Bene Episode 96: Examining Amnesty Conditions Under the U.S. Antitrust Leniency Scheme with Dylan Ballard and Mike Scarborough
09.09.2020

Practices

Antitrust and Competition
Antitrust Counseling and Compliance
California Antitrust and Unfair Competition Law
Cartel Investigations and Litigation
Consumer Protection
Government Merger and Civil Conduct Investigations
Intellectual Property / Antitrust
Private Civil Antitrust Litigation
International Reach
Korea
China
Japan
Litigation
Class Action Defense
Financial Services Litigation
Intellectual Property
False Advertising, Lanham Act and Unfair Competition
White Collar Defense and Corporate Investigations
Privacy and Cybersecurity

Industries

Blockchain and Fintech

Education

J.D., University of California, Berkeley, 1999
B.A., University of Virginia, 1993, with distinction, *Phi Beta Kappa*

Admissions

California

U.S. Courts of Appeals for the Fifth, Seventh and Ninth Circuits

United States District Courts for the Northern, Eastern and Southern Districts of California