



→ Michael W. Scarborough

Partner

Four Embarcadero Center
Seventeenth Floor
San Francisco, CA 94111

T: +1.415.774.2963

F: +1.415.434.3947

mscarborough@sheppardmullin.com

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

Areas of Practice

Mr. Scarborough is a first-chair trial attorney specializing in antitrust litigation and competition-related government investigations. He has extensive experience handling international cartel investigations and litigation, class actions, high-stakes commercial disputes, consumer protection matters, and litigation and regulatory advocacy at the intersection of antitrust and intellectual property law. He regularly represents multinational businesses in all phases of class action, direct plaintiff and competitor 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 regulatory inquiries and litigation around the world.

Mr. Scarborough's tireless and determined client advocacy garner him regular client, peer and media 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

The American Lawyer, Litigator of the Week, 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, 2020-2022

Legal 500, Recommended Lawyer – United States Antitrust, 2015-2021

Cartel

Civil litigation/class actions: defense

Merger Control

Benchmark Litigation, Litigation Star/Antitrust Star/California Litigation Star, 2009-2022

Acritas Stars, Star Lawyer, 2017-2021

Super Lawyers, Northern California Super Lawyer, 2014-2021

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.); Fifth Circuit Appeal No. 20-11032.

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.); Ninth Circuit Appeal No. 16-15782, F. App'x 553, 555 (9th Cir. Dec. 11, 2017).

Represented 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, as well as closure of related Department of Justice Antitrust Division investigation without action. *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, attempted monopolization, and related state law claims, including through 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

- Updates to DOJ Leniency Policy Further Complicate Decisions to Seek Antitrust Immunity; Some Suggestions from the Field, April 26, 2022
- Looking Ahead to Tougher Merger Guidelines and Enforcement, February 3, 2022

- Senate Zeros in on Big Tech with Latest Antitrust Reform Bill, November 2, 2021
- Privacy Now Looms Large In Antitrust Enforcement, *Law360*, September 17, 2021
- Congress Misses Opportunity to Bolster Flagging Cartel Enforcement through Whistleblowers, February 23, 2021

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Amnesty and Its Punishments: ACPERA and the Future of U.S. Antitrust Cartel Enforcement

The Legal 500 - Cartels Country Comparative Guide, April 30, 2020

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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 9, 2009
- Yes, We Really Do Have Amnesty: District Court Enforces DOJ Corporate Leniency Agreement, Dismisses Indictment Against Stolt-Nielsen And Company Executives, January 9, 2008
- IPO Underwriters Win Broad Antitrust Immunity In Supreme Court, July 5, 2007
- Plaintiffs Plead Your Plus Factors: Supreme Court Steps Up Antitrust Conspiracy Pleading Requirements, June 6, 2007
- Foreign Plaintiffs Challenging Global Cartels Strike Out Again In U.S. , March 7, 2007
- Second Circuit Affirms Dismissal of Merchant's Section One Challenges to MasterCard Rules, December 8, 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 3, 2006

Speaking Engagements

High-Tech Focus: IP and Antitrust, Informa Antitrust West Coast Conference, San Francisco, CA, May 13, 2022

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

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

U.S. District Courts for the Northern, Central, Eastern and Southern Districts of California