



Marc G. Schildkraut

Partner

Marc Schildkraut, a Partner at Howrey, specializes in mergers and antitrust litigation.

In the field of mergers, he obtained antitrust clearances in every matter in which he was the lead attorney. His representations include the Chevron/Texaco merger, the Exxon/Mobil merger, the BP/Amoco merger, the Boeing/McDonnell Douglas merger, the PepsiCo/Quaker merger, the Albertson's/American Stores merger, the Texaco/Shell joint venture, Intel's acquisition of Chips & Technology, Cargill's acquisition of Continental's grain trading business, the sale of Alpo to Nestle, Sun Oil's acquisition of Chevron's Northeast refinery and Frito Lay's acquisition of Eagle manufacturing assets.

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ADMISSIONS

District of Columbia

EDUCATION

Columbia University School of Law
(JD, 1976), *Phi Beta Kappa*

Columbia College (BA, 1973),
magna cum laude

Mr. Schildkraut's success in obtaining merger clearances includes several litigated matters. He thwarted two recent FTC attempts to enjoin acquisitions, representing Western Refining in the Federal Trade Commission's unsuccessful attempt to prevent Western's merger with a competing refiner, and representing Aloha Petroleum in the Federal Trade Commission's futile attempt to enjoin Aloha's acquisition of a competing gasoline marketer. Mr. Schildkraut, on the other hand, has sought and obtained an injunction preventing a merger, representing The Bon-Ton in a successful private antitrust action that blocked a department store chain's acquisition of a competing chain.

Recognizing his achievements in the merger area, he was named the "Attorney to Call for Help with the M&A Deal of your Life" by *Washington Business Forward* (<http://www.bizforward.com/wdc/issues/2002-01/bobs/people.shtml#bobs04>). The *Practical Law Company's* Competition Law feature on Super League lawyers also selected him as "a highly recommended competition lawyer."

Mr. Schildkraut's additional achievements in litigation include matters that explore the interface between antitrust and intellectual property, most notably he represented Intel in oral arguments before the Federal Circuit in *Intergraph v. Intel*. This case extended the proposition that the withholding of tangible intellectual property does not satisfy the requirements of a monopolization claim under the Sherman Act. He also successfully represented Schering-Plough in litigation before the Federal Trade Commission regarding the settlement of a patent dispute concerning generic drugs. The Administrative Law Judge ruled for

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Schering-Plough, dismissing the case.

Before joining Howrey, Mr. Schildkraut was an Assistant Director at the Federal Trade Commission's Bureau of Competition. While at the FTC, he directed the investigations of hundreds of mergers and several successful federal court injunction actions and administrative litigations. In addition to mergers, Mr. Schildkraut directed some of the most important conduct investigations at the FTC including the Microsoft investigation. He is the recipient of the Federal Trade Commission's annual award to the agency's top litigator.

REPRESENTATIVE MATTERS

- *Texaco/Chevron*. Represented Texaco in its merger with Chevron.
- *FTC v. Paul Foster, Western Refining and Giant Industries*. Prevented the Federal Trade Commission from obtaining an injunction against Western Petroleum's merger with Giant Industries.
- *FTC v. Aloha*. Prevented the Federal Trade Commission from obtaining an injunction against Aloha Petroleum's acquisition of gasoline marketing assets from Truststreet Properties.
- *Boeing/McDonnell Douglas*. Represented McDonnell Douglas in its merger with Boeing.
- *Intergraph Corp. v. Intel Corp.* Successfully represented Intel in two arguments before the Federal Circuit Court of Appeals, establishing a patent holder's right to refuse to deal in its patented goods.
- *The Bon-Ton Stores v. May Dept. Stores Co.* Successfully represented The Bon-Ton in a rare private federal court action, which blocked May's acquisition of a competitors department store chain in Rochester, New York.
- *Schering-Plough v. FTC*. Successfully defended Schering-Plough in administrative litigation before the Federal Trade Commission testing whether a settlement of a patent law suit is unlawful.
- *PepsiCo/Gatorade*. Represented Pepsi Cola in its acquisition of Gatorade.
- *American Stores/Albertson's*. Represented American Stores in its merger with Albertson's.
- *Exxon/Mobil*. Represented both Exxon and Mobil in their merger.

COURTS & ADJUDICATIVE BODIES

- United States District Court for the District of Columbia
- United States Court of Appeals for the District of Columbia Circuit
- United States Court of Appeals for the Federal Circuit

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- United States Court of Appeals for the Eleventh Circuit

PROFESSIONAL AFFILIATIONS

- Past Chair, American Bar Association, Antitrust Section, FTC Committee and Computer Industry Committee (1995–1999)

PUBLICATIONS & SPEAKING ENGAGEMENTS

ARTICLES

"The Antitrust Review of the Americas: Application of the U.S. Antitrust Laws to Joint Ventures." *Global Competition Review* (2006).

"Oracle and the Future of Unilateral Effects." *Antitrust* (May 4, 2005).

"Patent-Splitting Settlements and the Reverse Payment Fallacy." *Antitrust Law Journal* (January 2004).

SPEECHES

"Technological Tying Abroad (and at Home)." Annual Spring Meeting, ABA Section of Antitrust Law, Washington, DC (April 18, 2007).

"The Antitrust Challenge to Patent Settlements." Stanford Law School (September 15, 2006).

"The FTC and Patent Settlements." Cowen & Company, 8th Annual Healthcare Policy Conference (June 28, 2006).

"Bundling and Loyalty Discounts." ABA Section of Antitrust Fall Forum (November 15, 2005).

"Schering-Plough and the Resolution of Patent Disputes." Antitrust in Healthcare Conference (May 12, 2005).

"New Enforcement Agency Views on Monopoly in High-Tech Industries." 47th Annual Spring Meeting, ABA Section of Antitrust Law, Washington, DC (April 14 - 16, 1999).

"Intel." Howrey Seminar: Government Antitrust Enforcement in Technology Industries: 1999 & Beyond, Menlo Park, CA (February 24, 1999).