

Matthew A. Fischer
Partner, San Francisco, California

Intellectual Property
 Media & Entertainment Law
 Antitrust & Unfair Competition
 Complex Commercial Litigation



Scope of Practice

Matthew Fischer's practice involves intellectual property, media, antitrust and complex commercial litigation, including class actions and multi-district litigation.

Mr. Fischer handles a variety of intellectual property matters in the technology, media, life sciences, hospitality and food and beverage industries, among others. His practice includes litigating and resolving trademark infringement, dilution and unfair competition claims in federal and state courts and in connection with Internet and domain name disputes. Mr. Fischer also litigates copyright and patent infringement and trade secret misappropriation matters, including software, technology and Internet-related agreements and issues. He has represented a variety of companies in commercial disputes involving technology issues, defamation claims and data privacy issues, as well as litigating numerous contract, partnership and other business disputes.

Mr. Fischer counsels clients on intellectual property selection, registration and enforcement and avoiding infringing the rights of others, as well as advising on data security and privacy issues related to electronic commerce. He also drafts and negotiates licensing agreements covering trademarks, copyrights, patents and trade secrets.

He represents regional, national and international corporations against claims of price fixing, tying, bid rigging, monopolization and unfair competition in a broad array of industries, including the energy, pharmaceutical, construction, insurance, biotechnology, chemical and maritime industries.

Mr. Fischer co-chairs the firm's Hospitality Law Group, a team of attorneys providing legal services encompassing nearly every area of law common to the hospitality industry.

Representative Matters

Mr. Fischer has successfully litigated or resolved numerous intellectual property, antitrust and complex commercial actions in both state and federal court. He has obtained favorable verdicts for clients in arbitrations and both judge and jury trials.

Some of Mr. Fischer's intellectual property successes have included obtaining the dismissal of a trademark infringement claim and a domain name dispute based on the genericness of the asserted mark, successfully resolving a trademark infringement and dilution lawsuit by negotiating an agreement allowing his client to continue its use of the disputed mark, obtaining the dismissal of a trademark infringement claim regarding digital photography equipment, favorably settling claims for the misappropriation of numerous asserted trade secrets involving animal biologics, representing a biotechnology company in a patent infringement case involving the process of developing a polymer-based matrix for insertion in human tissue, settling claims of copyright and trademark infringement of aviation-related software in which the client paid nothing, defending a distributor of home decorative accessories against claims of copyright and design patent infringement, and favorably resolving claims of trademark infringement and counterfeit labeling against a cosmetics company.

Representative antitrust and unfair competition matters include: winning summary judgment of monopolization claims under the Sherman and Robinson-Patman Acts for a public utility; defending a pharmaceutical company in a matter involving allegations that patent rights were improperly obtained under the Hatch-Waxman Act; defending a biotechnology company against price fixing claims by purchasers of an animal nutrition food ingredient product; successfully resolving price discrimination claims against a life raft manufacturer; defending a manufacturer of a preservative in a matter involving claims of an international price fixing conspiracy, including responding to a DOJ subpoena in a related investigation; advising a Fortune 500 technology company on antitrust issues in connection with an ITC investigation of a third party in relation to DRAM microchip sales; defending a national life insurance company against bid rigging and unfair competition claims regarding brokerage compensation practices; defending a pharmaceutical company against unfair competition claims brought by a putative class of California counties alleging overcharges regarding a federal drug discount program; representing a pharmaceutical company against a price fixing claim involving the importation of prescription drugs in which summary judgment was granted based on the pass-on defense, an issue of first impression under California antitrust law and; defending a distributor of commercial ventilation systems against claims of unlawful tying, bid rigging, restraint of trade and monopolization.

In a breach of contract case in which the plaintiff sought over \$10 million in damages for technology maintenance and support services for a state-wide technology system, Mr. Fischer negotiated a stipulation for limited discovery which led to a settlement of the lawsuit for a diminutive fraction of the asserted claim.

Published Opinions

- *Closed Loop Marketing, Inc. v. Closed Loop Marketing, LLC*, 589 F. Supp. 2d 1211 (E.D. Cal. 2008) (order denying plaintiff's motion for preliminary injunction and granting defendant's motion to dismiss claims of trademark infringement, unfair competition and unjust enrichment).
- *Clayworth, et al. v. Pfizer, Inc.*, 165 Cal.App.4th 209 (2008) (affirming summary judgment based on the pass-on defense, an issue of first impression under California antitrust law), *review granted by* No. S166435 2008 WL 5087964 (Cal. Nov. 19, 2008). Mr. Fischer was an integral member of the team that developed the necessary evidentiary record and obtained summary judgment for defendant pharmaceutical manufacturers in a case alleging industry wide price fixing.
- *County of Santa Clara v. Astra USA, Inc.*, 540 F.3d 1094 (9th Cir. 2008)(reversing as to breach of third party beneficiary contract claim), 428 F. Supp. 2d 1029 (N.D. Cal. 2006)(dismissing breach of third party contract, unfair competition, False Claims Act and other causes of action), and 401 F. Supp. 2d 1022 (N.D. Cal. 2005)

(finding federal question jurisdiction despite plaintiff having pled only state law claims). Mr. Fischer is part of the team defending against drug pricing claims.

- *Tate v. Pacific Gas & Elec. Co.*, 230 F. Supp. 2d 1072 (N.D. Cal 2002) (order dismissing RICO claim and all but one antitrust claim) and *Tate v. Pacific Gas & Elec. Co.*, 230 F. Supp. 2d 1086 (N.D. Cal. 2002) (summary judgment regarding remaining antitrust claim of attempted monopolization).

Affiliations, Activities and Accomplishments

Mr. Fischer is a member of the American Bar Association, including the Intellectual Property, Antitrust and Litigation sections, the California Bar Association, including the Intellectual Property and Antitrust Unfair Competition Law sections, the Association of Business Trial Lawyers of Northern California; and the Bar Association of San Francisco. Mr. Fischer is admitted to practice in all state and district courts in California.

Publications and Presentations

“Mobile Data Collection,” chapter author, *2012 Practically Pocket Sized Treatise on Internet Law*, February 2012.

“Trademark Infringement Claims Based on Nominative Use Get Boost from Circuit Court Ruling,” co-author, *Intellectual Property & Technology Law Journal*, August 2011.

“Critical Privacy Issues: Best Practices for Navigating the Legal Landscape and Minimizing Risk,” co-presented Chicago Sedgwick Seminar Series, May 11, 2011

“Federal Data Privacy Legislation on the Horizon,” ABA/*TIPS Media, Privacy and Defamation Newsletter*, Spring 2011

“Data Privacy and How to Stay Ahead of the Curve,” Sedgwick’s *Media Law Bulletin*, March 2011

“IP Litigation Strategies in the Context of Current Trends,” *Inside Minds: Litigation Strategies for Intellectual Property Cases*, Aspatore Books, Thomson Reuters Publishing, 2010

“*Ascroft v. Iqbal*: The Supreme Court’s Attempt to Clarify *Bell Atlantic v. Twombly*,” *The Journal of the Antitrust and Unfair Competition Law Section of the State Bar of California*, Vol. 18, No. 2 Fall 2009

“Hospitals Can’t Use Inpatient Services Monopoly To Contract for Exclusive to Preferred Provider Status for Outpatient Facility,” Sedgwick’s *Healthcare Law Newsletter*, Spring 2009

“Empagran Clears Up Only A Small Set Of Antitrust Cases,” *San Francisco Daily Journal*, September 3, 2004

Contributing author to the section on Judgments and Costs of the 2002 Legislation and Developments of the *California Litigation Review*

Education

Mr. Fischer received his B.A. degree, *cum laude*, in 1991 from Kenyon College. He received his J.D. degree from the University of California at Berkeley, Boalt Hall School of Law in 1997, where he served on the executive board of the *Ecology Law Quarterly*.