

Speaker Biography



Marc C. Schildkraut

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Marc G. Schildkraut joined the firm in 2005 and is Co-Chair of the Antitrust & Trade Regulation Practice Group at Heller Ehrman.

Experience

Mr. Schildkraut practices antitrust law before U.S. and international enforcement agencies and the courts, focusing on mergers, civil investigations and antitrust litigation. In the merger area, he has obtained agency clearance in every case in which he was lead attorney. He has handled some of the most high profile agency merger investigations, representing McDonnell Douglas in the Boeing/ McDonnell Douglas merger, Amoco in the BP/Amoco merger; Texaco in the Texaco/Chevron merger, Exxon and Mobil in the Exxon/Mobil merger, PepsiCo in the PepsiCo/Quaker merger, American Stores in the Albertson's/American Stores merger, Chips and Technologies in Intel acquisition of Chips and Technologies, Comcast in the acquisition of AT&T's cable operations, Sunoco in separate acquisitions of Chevron's and El Paso's Philadelphia-area refineries, Frito Lay in the acquisition of Eagle snack food manufacturing assets, Royal Dutch Shell in the acquisition of Montedison. Previously, he served at the Federal Trade Commission for 17 years in various positions, including Assistant Director for the Bureau of Competition. 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>.

Mr. Schildkraut's notable achievements in litigation include several matters that explore the interface between antitrust law and intellectual property. Mr. Schildkraut represented Intel in two appeals to the Federal Circuit in *Intergraph v. Intel*. The Federal Circuit decisions in those cases extended the proposition that the withholding of tangible intellectual property does not satisfy the requirements of a monopolization claim under the Sherman Act. Most recently, he was part of the team that successfully represented Schering Plough in the 11th Circuit Court of Appeals' decision reversing the Federal Trade Commission decision that Schering's settlement of patent litigation was unlawful.

Mr. Schildkraut has also successfully litigated several merger matters. He recently represented Aloha Petroleum in the Federal Trade Commission's futile attempt to enjoin Aloha's acquisition of a competing gasoline marketer. He represented the Bon-Ton in a successful private antitrust action that blocked a department store chain's acquisition of a competing chain. While at the Federal Trade Commission, he received the FTC's annual award as its top litigator. Mr. Schildkraut is highly ranked by a variety of international rating services, including the Global Competition Review's *International Who's Who of Competition Lawyers*, Global Competition Handbooks' *Competition Law and Chambers Global*. Mr. Schildkraut was selected by his peers as *Woodward/White Inc.*'s 2006 "Best Lawyers in America."

He has had leadership roles on various committees of the Antitrust Section of the American Bar Association, including the Computer Industry Committee, the Federal Trade Commission Committee and the Energy & Fuels Committee. He is presently a member of the Section's Long Range Planning Committee.

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Education

Columbia College (B.S., *magna cum laude*, 1973); Columbia University School of Law (J.D., 1976); Editor-in-chief, Columbia Journal of Law & Social Problems; Charles Evan Hughes Fellow.

Admissions

District of Columbia, New York, U.S. District Court for the District of Columbia, U.S. Court of Appeals for the District of Columbia, U.S. Court of Appeals for the Federal Circuit, U.S. Court of Appeals for the 11th Circuit.

Memberships

District of Columbia Bar, New York State Bar, American Bar Association

Representative Engagements (prior to joining Heller Ehrman)

Selected Mergers and Acquisitions while in private practice

Represented Sunoco in its acquisition of Chevron's Northeast Refinery.

Represented Sunoco in its acquisition of Coastal's Eagle Point refinery.

Represented Texaco in its refining and marketing joint venture with Shell.

Represented both Exxon and Mobil in their merger.

Represented Texaco in its merger with Chevron.

Represented Texaco in its sale of its fuel additive business to Ethyl.

Represented Amoco in its merger with BP.

Represented both Royal Dutch Shell and Montedison in Shell's acquisition of Montedison.

Represented Sunoco in the sale of petrochemical businesses to BASF.

Represented McDonnell Douglas in its merger with Boeing.

Represented Martin Marietta in the acquisition of General Dynamics space business.

Represented Martin Marietta in its merger with Lockheed.

Represented Pillsbury in its sale of pet food business to Nestle.

Represented Frito Lay in its acquisition of Eagle Snack food assets from Anheuser Busch.

Represented Pepsi Cola in its acquisition of Gatorade.

Represented Foster Farms in its acquisition of Zachy's.

Represented Cargill in its acquisition of Morton's salt business.

Represented Cargill in its acquisition of Continental's grain trading business.

Represented Heinz in its attempted acquisition of Beech Nut.

Represented American Stores in its merger with Albertson's.

Represented Chips & Technology in the sale of the company to Intel.

Represented Aspect Development in its acquisition of a competing database company.

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Represented Comcast in its acquisition of AT&T's cable business.

Represented intervening parties in the AOL/Time Warner merger.

Represented intervening parties in the Time Warner/Turner merger.

Selected Litigation:

Prevented the Federal Trade Commission from obtaining an injunction against Aloha Petroleum's acquisition of gasoline marketing assets from *Truststreet Properties, FTC vs. Aloha*, No. 05-00471 HG KSC (2005).

Successfully defended Schering Plough in administrative litigation before the Federal Trade Commission testing whether a settlement of a patent law suit is unlawful, *Schering Plough v. F.T.C.*, 402 F.3d 1056 (11th Cir. March 8, 2005).

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, *Intergraph Corp. v. Intel Corp.* 195 F.3d 1346 (Fed. Cir. 1999).

Successfully represented the Bon-Ton in a rare private federal court action blocking May's acquisition of a competitors department store chain in Rochester, New York, *The Bon-Ton Stores v. May Dept. Stores Co.*, 881 F. Supp. 860 (W.D.N.Y. 1994).

Successfully represented the Federal Trade Commission in obtaining an injunction against Coca-Cola's acquisition of Dr Pepper, *FTC v. Coca-Cola.*, 641 F. Supp. 1128 (D.D.C. 1986), *vacating mem.*, *FTC v. Coca-Cola Co.*, 829 F.2d 191 (D.C. Cir. 1987).

Successfully represented the Federal Trade Commission in obtaining an injunction against PRI's acquisition of Shell Oil's Hawaiian gasoline marketing business. No. C87-1390C (W.D. WA Nov. 6, 1988).

Selected Publications

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

"Patent Splitting Settlement and the Reverse Payment Fallacy," *Antitrust Law Journal*, Vol. 71, No. 1003 (2004).

Selected Speaking Engagements

American Intellectual Property Law Association (May 15, 2003)

The Advanced Patent Law Institute (December 6, 2002)

Northwestern University School of Law Competition in Health Care Forum (November 8, 2002)

American Bar Association, Antitrust Section, Forum on Antitrust and Intellectual Property: Competition and Innovation in High-Tech Industries (June 7, 2002).

"New Enforcement Agency Views on Monopoly in High-Tech Industries," 47th

Annual Spring Meeting, ABA Section of Antitrust Law, Washington, D.C. (April 14-16, 1999.)