Daniel G. Swanson

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Daniel G. Swanson is a partner in Gibson Dunn, with offices in Los Angeles and Brussels. Dan, who Co-Chaired Gibson Dunn's Antitrust and Competition Practice Group for 25 years, is a trial and appellate lawyer. His practice focuses on antitrust and competition law, including trial and appellate litigation, class actions, grand jury and civil investigations, merger review, regulatory and competition policy matters, and antitrust counseling. He is the past Co-Chair of the International Bar Association's Antitrust Section (having served from 2020-22), the world's largest organization of international antitrust practitioners. In addition to antitrust matters, Dan has handled a wide variety of commercial litigation disputes.

Dan graduated *magna cum laude* from Harvard Law School and holds a Ph.D. in economics from Harvard University, where he was a Harvard Teaching Fellow. He is a member of the California and Brussels Bars, and is qualified as a solicitor of England and Wales and the Republic of Ireland. He is admitted to practice before the U.S. Supreme Court, the Federal Circuit, the D.C. Circuit and the Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth, and Tenth Circuits. He is also a member of the American Economic Association.

Chambers USA gives Dan a "Band 1" ranking and reports that he "has a vast amount of antitrust expertise covering everything from merger investigations to civil and criminal litigation" and describes him as "a highly regarded trial lawyer with a wealth of experience" and as "a 'tough opponent' in civil and criminal litigation, alleged cartel matters and IP-related issues." Additionally, *Chambers Global* recognizes Dan for his work in Antitrust: Cartel. *Law360* has named Dan an MVP, which features attorneys who have "distinguished themselves from their peers in high-stakes litigation, record-breaking deals and complex global matters." *Lexology/Who's Who Legal* ranks him as a "Thought Leader" and comments that "Daniel Swanson is a leading competition litigator whose 'economics PhD is part of what makes him an outstanding attorney,'" and who "scores very highly for his 'tenacious and persuasive' litigation practice across a wide range of competition matters." *The Legal 500* places him in its "Hall of Fame" for U.S. Antitrust and Class Action litigation, reserved for "lawyers at the very top of the profession, widely known and respected by peers and clients for their longstanding involvement in market-leading work." *Benchmark Litigation* describes Dan as "nationally recognized for [his] antitrust expertise" and as a California "Litigation Star" and named him California Antitrust Attorney of the Year for 2020. *Expert Guide*'s *Best of the Best USA* – 2022 lists him as one of 30 top antitrust practitioners in the country. He has repeatedly been recognized by *Best Lawyers in America*® since 2006 and has been named the "Lawyer of the Year" for Antitrust in Los Angeles seven times. He has been listed in every edition of *Lawdragon*'s 500 Leading Litigators in America.

Dan has litigated dozens of Sherman Act Section 2 monopolization and dominance cases — including so-called "bet the company" cases — based on a wide range of alleged conduct (*e.g.*, exclusive dealing, refusals to deal, tying, bundling), including defeating the

Capabilities

Antitrust and Competition
Anti-Corruption & FCPA
Appellate and Constitutional Law
Class Actions
Crisis Management
Intellectual Property
Law Firm Defense
Litigation
Media, Entertainment, and Technology
Technology Litigation
Trials
White Collar Defense and Investigations

Credentials

Education

Harvard University - 1985 Doctor of Philosophy
Harvard University - 1984 Master of Economics
Harvard University - 1984 Juris Doctor
University of California - Berkeley - 1979 Bachelor of Arts

Admissions

England & Wales - Solicitor
California Bar
Belgium - Barreau de Bruxelles

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landmark predatory pricing case brought by the Department of Justice, *United States v. AMR Corp.*, 140 F. Supp. 2d 1141 (D. Kan. 2001), *aff'd*, 335 F.3d 1109 (10th Cir. 2003). For many years, he has given the annual lecture on monopoly law for the Practicing Law Institute's *Annual Developments in Antitrust Law* program.

Dan's practice has a strong focus on the tech sector, network industries, digital platforms, and media and entertainment businesses. He regularly handles antitrust matters involving patents, copyrights and other intellectual property rights and was asked to testify about standard setting in the DOJ-FTC Joint Hearings regarding Competition and Intellectual Property Law and Policy.

Dan is a regular speaker on antitrust and competition topics and contributes to leading antitrust journals and treatises. He is the author (with Prof. William J. Baumol) of *Reasonable and Nondiscriminatory (RAND) Royalties, Standards Selection, and Control of Market Power,* 73 Antitrust L.J. 1 (2005) and *The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power*, 70 Antitrust L.J. 661 (2003), on which the U.S. Supreme Court relied in *Illinois Tool Works v. Independent Ink,* 547 U.S. 28 (2006).

Dan frequently represents clients in connection with price-fixing allegations, and has handled more than 25 international cartel investigations. He has extensive experience in litigating civil claims based on alleged conspiracy, including price fixing, group boycott, and market allocation claims, and he has defended scores of class action lawsuits asserting such claims (*e.g.*, involving e-books, industrial chemicals, air cargo, financial instruments, food, automotive coatings, polyurethane foam, air travel, gasoline refining, cable, and broadcast television).

Dan also counsels clients on mergers, acquisitions and joint ventures, and handles merger-clearance matters before the FTC, DOJ, and European Commission, and represents clients in merger?related civil litigation.

Dan regularly draws upon his experience as a U.K. solicitor and member of the Brussels Bar in handling international antitrust matters. He has served as a Non-Governmental Advisor (NGA) to the International Competition Network (ICN) and has participated in multiple ICN Annual Meetings. He previously served as Co-Chair of the ABA Antitrust Section's International Committee (2002-06) and as Editor-in-Chief of the Antitrust Section's First Supplement to Competition Laws Outside the United States (2005). He has taught antitrust law at the LSIW Program of the Executive School of Management, Technology and Law of the University of St. Gallen, Switzerland.

Dan's major representations include the following:

- Lead counsel for major technology company in antitrust action in federal court (N.D. Cal. 2024), obtaining dismissal of antitrust claims alleging market division, restraint of trade and conspiracy to monopolize;
- Co-lead counsel for Apple in *Epic Games v. Apple Inc*., 67 F.4th 946, 967 (9th Cir. 2023), winning judgment for Apple on all antitrust claims for monopolization and restraint of trade after a bench trial (subsequently affirmed on appeal)
- Co-lead counsel for Swisher International in *Trendsettah USA, Inc. v. Swisher International, Inc.*, 31 F.4th 1124 (9th Cir. 2022), winning order setting aside jury verdict on Section 2 monopolization claim based on plaintiffs' fraud;
- Lead counsel for major technology company in antitrust action in federal court (D. Del. 2021), obtaining dismissal of antitrust claims alleging monopolization and tying and affirmance on appeal by the Federal Circuit;
- Lead counsel for MGM and United Artists Corporation in connection with the successful termination of the *Paramount* Decrees, which had "regulated aspects of the movie industry for the last seventy years." *United States v. Paramount*, 2020 WL 4573069 (S.D.N.Y. 2020);
- Lead counsel for Nasdaq in a bench trial before the Chief Administrative Law

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Judge of the Securities and Exchange Commission in *In the Matter of the Application of Securities Industry and Financial Markets Association*, resulting in the rejection of all challenges to the alleged "monopoly" pricing of Nasdaq's depth-of-book market data, and, on appeal, the overturning of the SEC's reversal of the ALJ's decision, *see Nasdaq v. SEC*, 961 F. 3d 421 (D.C. Cir. 2020);

- Lead antitrust counsel for defendant contract manufacturers in *Qualcomm Inc. v. Compal Electronics, Inc.*, 283 F. Supp. 3d 905 (S.D. Cal. 2017), winning denial of Qualcomm's preliminary injunction motion seeking billions of dollars in royalties where court held that defendants had asserted "a number of valid defenses and counterclaims" intended to "prevent Qualcomm from continuing to profit from [its] allegedly illegal business model and from continuing to inflict anticompetitive harm";
- Lead counsel for NBCUniversal in *In re National Football Leagues Sunday Ticket Antitrust Litigation* (C.D. Cal 2016), obtaining voluntary dismissal of NBCU from antitrust class action against NFL teams, DirecTV, and various networks alleging agreement to eliminate competition in broadcasting and sale of live telecasts of professional football games;
- Lead counsel for UBS in the European Commission's Credit Default Swap (CDS) investigation, in which the Commission in December 2015 — subsequent to the presentation of UBS's defense during a 6-day Oral Hearing—dropped its Statement of Objections and withdrew allegations that UBS and other banks infringed Article 101 TFEU by conspiring to prevent CDS exchange trading;
- Lead counsel for Time Warner Cable in *Fischer v. Time Warner Cable,* 234 Cal. App. 4th 784 (2015), obtaining dismissal, affirmed on appeal, of a class action complaint seeking over $6 billion in restitution for alleged unfair competition alleging that Time Warner Cable denied subscribers the opportunity to opt out of new Los Angeles Dodgers and Los Angeles Lakers sports channels;
- Lead counsel for AkzoNobel subsidiary International Paint in *MYD Marine Distributor, Inc. v. International Paint Ltd.* (Florida 2014), obtaining summary judgment, subsequently affirmed on appeal, and a multi-million-dollar award of attorney's fees to be paid by plaintiffs in an antitrust case brought by terminated distributors of yacht paint for an alleged vertical price-fixing conspiracy;
- Lead counsel for Riverside Seat Company, Woodbridge Foam Fabricating, Inc. and SW Foam LLC in *United States v. Riverside Seat Company* (E.D.N.Y. 2014), resolving criminal charges and obtaining a substantial downward sentencing departure for cooperation in polyurethane foam price fixing investigation;
- Lead counsel for Cox Communications in *Brantley v. NBC Universal,* 675 F.3d 1192 (9th Cir. 2012), obtaining dismissal of antitrust claims brought by a putative class of over 90 million cable and satellite television subscribers challenging vertical distribution agreements requiring the bundled sale of television programming;
- Lead counsel for Occidental Petroleum Corporation in *Massbaum v. SCS Energy* (C.D. Cal. 2012), obtaining voluntary dismissal with prejudice after moving to dismiss all antitrust and fraud claims purportedly arising out of defendants' alleged "monopoly" of "Big Coal" industry;
- Lead counsel for Dole Food in *In re Fresh and Process Potatoes Antitrust Litigation* (D. Idaho 2011), winning dismissal of an antitrust nationwide class action asserting direct and vicarious liability for alleged conspiracy to restrict the supply and raise the price of potatoes;
- Lead counsel for DreamWorks in DOJ "employee hiring practices" antitrust investigation, obtaining a no-charge disposition;
- Lead counsel for Flexsys N.V. in numerous cases including *Korea Kumho Petrochemical Co. v. Flexsys* 2010 Trade Cas. 76,930 (CCH) (9th Cir. 2010), obtaining the dismissal, affirmed on appeal, of an antitrust case brought by a competitor alleging a group boycott and "sham" patent litigation; and a series of "indirect purchaser" price-fixing class action lawsuits in over 20 states, obtaining

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denial of class certification of an alleged class of millions of California consumers and dismissals of 16 other cases prior to class certification;

- Lead counsel for Sony Pictures Entertainment Inc. in *RealNetworks v. DVD Copy Control Ass'n* and *Universal City Studios Productions LLLP v. RealNetworks* (N.D. Cal 2010), obtaining dismissal of "group boycott" antitrust claims challenging licensing arrangements protecting DVDs from unlawful copying;
- Lead counsel for AkzoNobel in *In re Hydrogen Peroxide Antitrust Litigation*, 552 F.3d 305 (3d Cir. 2009), obtaining advantageous settlement of price fixing claims and highly favorable appellate decision imposing exacting requirements for certifying price fixing class actions;
- Lead counsel for Pfizer in *RxUSA Wholesale v. Alcon Laboratories*, 2010-1 Trade Cas. 77,083 (CCH) (E.D.N.Y. 2009) in which Pfizer's motion on behalf of more than a dozen major drug manufacturers was granted resulting in the dismissal of Section 1 and 2 refusal-to-deal claims by plaintiff secondary wholesaler;
- Lead antitrust counsel for Vivendi in connection with Vivendi's agreement with GE to sell its 20 percent stake in NBC Universal for $5.8 billion;
- Lead counsel for Martinair Holland N.V. (a subsidiary of KLM) in *United States v. Martinair* (D.D.C. 2008), resolving criminal charges and obtaining a substantial downward sentencing departure for cooperation in air cargo price fixing investigation;
- Lead appellate counsel for McDonald's in *Abbouds' McDonald's LLC v. McDonald's Corporation,* 2006-2 Trade Cas. 75,324 (CCH) (9th Cir. 2006), winning affirmance of summary judgment dismissal of "bid rigging" claims under Section 1 of the Sherman Act;
- Lead counsel for Cox Communications in connection with DOJ and FTC review of the 2006 acquisition of CableAmerica Corporation;
- Lead counsel for the Motion Picture Association of America, the Recording Industry Association, the National Football League, the Business Software Alliance, the Independent Film & Television Alliance and other intellectual property holders as *amicus curiae* in the Supreme Court in *Illinois Tool Works v. Independent Ink,* 547 U.S. 28 (2006), successfully arguing that antitrust market power should not be presumed from ownership of a patent or copyright;
- Lead counsel for AkzoNobel in *Latino Quimica-Amtex S.A. v. Akzo Nobel Chemicals B.V.*, 2005-2 Trade Cas. (CCH) 74,974 (S.D.N.Y. 2005) (appeal dismissed with prejudice), obtaining dismissal of extraterritorial price-fixing claims brought by foreign plaintiffs for lack of subject matter jurisdiction under the Foreign Trade Antitrust Improvements Act (FTAIA);
- Lead counsel for AkzoNobel in *In re Automotive Refinishing Paint Litigation* and a related DOJ grand jury investigation into the pricing of automotive refinishing paints, resulting in a favorable civil settlement and the closure of the DOJ investigation without charges;
- Lead counsel for Jostens in *Pocino v. Jostens*, obtaining the dismissal (affirmed on appeal) of a California state court consumer class action asserting unfair competition and false advertising claims in connection with the on-line sale of insignia merchandise;
- Lead appellate counsel for Jostens in *Epicenter Recognition, Inc. v. Jostens, Inc.,* 2003-2 Trade Cas. 74,270 (CCH) (9th Cir. 2003), obtaining a complete reversal of a judgment of monopolization in violation of Section 2 of the Sherman Act;
- Lead counsel for AkzoNobel in *Coatings Resource v. Akzo Nobel*, 2003-1 Trade Cas. (CCH) 73,983 (9th Cir. 2003), obtaining summary judgment (affirmed on appeal) in an alleged predatory pricing case;
- Co-counsel for American Airlines in *United States v. AMR Corp.*, 140 F. Supp. 2d 1141 (D. Kan. 2001), *aff'd*, 335 F.3d 1109 (10th Cir. 2003), in which American obtained summary judgment in an alleged monopolization and predatory pricing

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case brought by the U.S. Department of Justice;

- Co-counsel for Toyota at trial and lead counsel on appeal of an antitrust and tort case over Lexus distribution and export policies culminating in a jury verdict for Toyota and a landmark decision of the California Supreme Court modernizing the state's law of tortious interference*, Della Penna v. Toyota*, 11 Cal. 4th 376 (1995);
- Lead counsel for National Cable Advertising in *Thompson Everett v. National Cable Advertising*, 57 F.3d 1317 (4th Cir. 1995), obtaining summary judgment on Section 1 and Section 2 exclusive dealing claims;
- Co-counsel representing a major utility at trial and in summary judgment and appellate proceedings, all resolved successfully: *Vernon v. Southern California Edison*, 955 F.2d 1361 (9th Cir. 1992); *Anaheim v. Southern California Edison*, 955 F.2d 1373 (9th Cir. 1992); *Anaheim v. FERC*, 941 F.2d 1239 (D.C. Cir. 1991).

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