

# Daily Journal

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## Top Antitrust Lawyers 2020

### Daniel G. Swanson

**S**wanson is co-chair of Gibson Dunn's antitrust and competition practice group.

He's preparing for an April 2021 retrial in the extraordinary case that blew up last year when he won for his client the reversal of a \$44 million antitrust verdict in a battle between competing cigar manufacturers. *Trendsettah U.S.A. Inc. v. Swisher International Inc.*, 8:14-cv-01664 (C.D. Cal., filed Oct. 14, 2014).

Swanson's advocacy for client Swisher International included persuading U.S. District Judge James V. Selna of Santa Ana to rule that the court was "a victim of fraud" by Trendsettah after learning that the plaintiff company's founder was arrested in a criminal tax evasion case that related directly to the civil proceedings. Selna relieved Swanson's defendant client from the \$44 million 2016 judgment last August. Swanson said the post-verdict maneuvering has been so unusual that it is a "procedural unicorn" worthy of a law school exam.

"It is not an everyday occurrence...for the evidence to disclose a level of misrepresentation that rises to this degree," Swanson said. In his motion for relief from the judgment, Swanson described how Trendsettah presented in court "a falsely inflated picture of the profitability of its cigarillo sales out of which its

expert constructed a largely, if not entirely, sham claim for 'lost profits.'" Swisher had switched to Gibson Dunn for its appeal after the big loss at trial.

Trendsettah is challenging Selna's reversal and making other claims at the 9th U.S. Circuit Court of Appeals, but Swanson called that a sideshow. "We're focused now on dragging discovery out of them so we can put the story together for the retrial," he said.

In another matter, Swanson and Gibson Dunn colleagues represent Uber Technologies Inc. in antitrust litigation brought by SC Innovations Inc., a former competitor known as Sidecar Technologies. Last year Swanson successfully moved to disqualify the plaintiff's original counsel, Quinn Emanuel Urquhart & Sullivan LLP on the grounds that it had previously represented Uber.

The plaintiff, now represented by McKool Smith, alleges that Uber illegally monopolized the ride-hailing market in several U.S. cities. Sidecar is arguing a predatory pricing theory of harm based on claims that Uber undercut Sidecar's prices to drive it out of business.

Chief Magistrate Judge Joseph C. Spero of San Francisco ruled against Swanson's motions to dismiss the case. *SC Innovations Inc. v. Uber Technologies Inc.*, 3:18-cv-0744 (N.D. Cal., filed Dec. 11, 2018).

"I had my first Zoom argument. There were 40 people on the line," Swanson said.



#### GIBSON, DUNN & CRUTCHER LLP

LOS ANGELES

PRACTICE TYPE: LITIGATION, APPEALS

"It was a little weird to do it from home. We're now in discovery. Antitrust is an interesting field because cases can go forward even when the allegations may strain credulity."

— John Roemer