

## MVP: Gibson Dunn's Daniel G. Swanson

By **Matthew Perlman**

*Law360 (September 7, 2021, 2:15 PM EDT)* -- Gibson Dunn & Crutcher LLP's Daniel G. Swanson helped lead Apple's trial defense in the high-profile monopolization case over its App Store brought by Epic Games and got a verdict reversed in an antitrust case against tobacco company Swisher International, earning him a spot as one of Law360's 2021 Competition MVPs.

### ***HIS BIGGEST ACCOMPLISHMENT THIS YEAR:***

Swanson said his most satisfying legal result from the past year is the victory he helped win for Swisher International in a long-running case brought against it by cigarillo company Trendsettah.

Trendsettah accused Swisher of using its dominance to become a manufacturer for Trendsettah's Splitarillos and then backing out of the deal as a way to sabotage a would-be-rival's supply. Gibson Dunn came on after a jury found in favor of Trendsettah in 2016 and issued a \$14.8 million award that the court later tripled to \$44.4 million.

The lower court initially reversed the verdict, but the Ninth Circuit reinstated it in 2019. The U.S. Supreme Court later declined to review the appeals court's decision.

But the lower court reversed the verdict again after Trendsettah's president, Akrum Alrahib, was indicted in connection with an alleged scheme to avoid paying federal excise tax on imported cigarillos. Swisher convinced the judge to reverse the award and order a new trial based on contentions that Trendsettah had committed fraud because it used falsified financial records as the basis of the damages it sought.

"From the very first moment, it certainly seemed to my colleagues and I like a miscarriage of justice," Swanson said. "It's been a long road, one of the most complicated cases, procedurally, that I've been involved in."

In September 2020, the district court entered a judgment in Swisher's favor, awarding it more than \$10 million in fees and costs.



"It gave me an enormous amount of satisfaction, both legally and from the standpoint of seeing justice done," Swanson said. "Not the kind of case I expected when it arrived on the doorstep."

Trendsettah still has an appeal pending at the Ninth Circuit, according to court records.

#### ***OTHER NOTABLE CASES FROM THE PAST YEAR:***

Swanson is also helping lead the Gibson Dunn team defending Apple from antitrust allegations lodged by developers and consumers over its App Store policies that target the commissions Apple collects on sales in the store and restrictions it places on apps. The firm has worked on cases for Apple before and has been on the App Store litigation since the consumer case returned from a trip to the U.S. Supreme Court in 2019.

Smaller developers reached a deal with Apple in late August, with the tech giant agreeing to pay \$100 million and to implement changes to its policies to settle their claims.

But allegations from the consumers remain pending as do claims from Epic Games, maker of the popular video game Fortnite. Though filed after the other cases, in August 2020, Epic's case against Apple was the first to be tried, with a closely watched 16-day bench trial wrapping in May.

Swanson helped handle Apple's antitrust strategy, conducted direct and cross-examinations of experts during the trial and participated in closing arguments. He noted that the preparations for trial were made in around nine months and amid the pandemic, meaning many tasks had to be done remotely.

"I've been around for a long, long time," Swanson said. "I've seen a bunch of fascinating antitrust cases, lots of intensity, lots of trials, but this was the most intense and the busiest period I have ever had."

Swanson also represented MGM and United Artists in the U.S. Department of Justice's nixing last year of long-standing court mandates — known as the Paramount Consent Decrees — that forced some of the largest film studios to sell their theaters and put restrictions on the way they book films.

The DOJ said the orders, which dated to the 1950s, were no longer necessary due to changes in the industry and in the ways Americans consume entertainment. A court agreed and terminated the decrees in August.

"For an antitrust lawyer, that's a nice connection to an area of law that is very much of interest to me," Swanson said. "It has historical significance and some human interest, with the movie business."

#### ***WHAT MOTIVATES HIM:***

Swanson said antitrust is a "very kaleidoscopic legal practice" that deals with a wide range of issues. He noted that matters can involve advising clients on criminal allegations involving price-fixing and bid-rigging, investigations by government enforcers into civil antitrust violations, merger reviews, litigation and trials, among other things.

"Typically, these are the most important issues facing companies, whether it's a merger, or a joint venture, or a criminal investigation," he said. "The stakes are always high, the action is always intense."

#### ***HIS ADVICE FOR JUNIOR ATTORNEYS:***

The biggest piece of advice Swanson has for younger attorneys coming up in the field is to find an area

of law that interests them. He said that the practice of law has always been very difficult and time-consuming and that it involves a lot of sacrifices.

"Law is hard," he said. "If you don't really find what you're doing to be engaging and rewarding, it's just not a happy job."

Swanson also tells younger attorneys that it's important to cultivate a sense of humor, saying it will keep them going "through the long hours" and will help to bring joy to people around them.

"There's an enormous amount of fodder for humor in the practice of law," he said. "There's a place for it in the practice."

— *As told to Matthew Perlman*

*Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2021 MVP winners after reviewing nearly 900 submissions.*