

Competition Group Of The Year: Gibson Dunn

By **Matthew Perlman**

Law360 (February 7, 2022, 2:04 PM EST) -- The competition group at Gibson Dunn & Crutcher LLP helped longtime client Apple Inc. score an important win in its battle with Epic Games over App Store restrictions and notched several key rulings on class issues in antitrust cases against other clients, earning the firm a spot among Law360's 2021 Competition Groups of the Year.

Gibson Dunn's antitrust and competition practice includes 62 partners and 210 total attorneys spread across nearly all the firm's 20 global offices. Rachel S. Brass, co-chair of the group and a partner in the San Francisco office, told Law360 the team's growth has included some major lateral moves recently, as well as the promotion of attorneys internally.

And a particular point of pride, she said, is that eight of the last 11 people promoted to partner within the firm were women or attorneys from underrepresented groups.

"I think that really sets us apart," Brass said. "It shows that we hear our clients in the market about what they want their antitrust teams to look like. We have a long and proven track record of cultivating and promoting a diverse team of attorneys who ultimately rise up and lead major matters and practice groups."

One of Gibson Dunn's highest-profile matters over the last year was its defense of Apple against the antitrust case brought by Epic Games, developer of the popular Fortnite video game. Epic alleged that restrictions Apple imposes through its App Store violate antitrust law, but after a 16-day bench trial in May, U.S. District Judge Yvonne Gonzalez Rogers issued a sprawling opinion rejecting the bulk of Epic's case.

The court found that Apple is not a monopolist and had not violated state or federal antitrust law, while siding with Epic only on an ancillary claim under California's unfair competition statute that targeted an anti-steering rule.

Cynthia Richman, who helped lead Gibson Dunn's team of 10 partners on the case, said that the firm has been working with Apple on antitrust and other issues for some time, including proposed class actions over the App Store and the government's e-book antitrust case lodged back in 2012.

"We have a very close relationship, and I think that helps yield exceptional work product," Richman said.



Richman also said the Epic case was exceptional for a number of reasons, including for the number of very senior attorneys rolling up their sleeves "to do whatever it took to secure the victory" for Apple.

"That's a testament to the teamwork that's allowed Gibson Dunn to become such a litigation powerhouse," Richman said. "I found myself marveling in the middle of trial about all these superstar lawyers who dropped everything to work on this matter."

Stephen Weissman, a co-chair of the practice group based in Washington, D.C., said the group's strengths span industries and disciplines, with significant work for clients involved in cartel investigations in the U.S. and abroad as well as a growing merger practice. The firm's antitrust litigation practice, he said, is the "gold standard."

"Companies with high-stakes matters call Gibson Dunn because we know how to put a team together that serves the client's best interests," he said. "I think that was on full display in the Apple-Epic showdown."

Brass said another strength of the practice group is that many of its attorneys spend some of their time working on issues outside antitrust. This meant that when federal enforcers first started ramping up focus on antitrust labor issues in 2016, Brass said the firm already had a team in place, including herself, thinking about the space.

Gibson Dunn's work at the intersection of antitrust and labor includes representing McDonald's and Jimmy John's, who are among a number of chains being targeted in private suits over past contract provisions that prevented franchisees from hiring workers from one another, or so-called no-poach provisions.

Illinois federal judges rejected class certification bids from workers from each company in separate July orders, marking some of the first rulings to address proposed classes in no-poach cases in the franchise context.

"Wherever there is demand, or are issues that are on the knife's edge of antitrust, we tend to have a team that has already been thinking about and working in those spaces," Brass said.

The firm also scored a major win for client Merck on a class issue in August when the Fourth Circuit vacated the certification of a class of direct purchasers in a case alleging the pharmaceutical company delayed generic versions of the cholesterol drug Zetia. The appellate panel found a group of 35 drug wholesalers did not meet the numerosity requirement for class actions and sent the case back down to the lower court for another look at the issue.

Weissman said there have only been one or two other appellate wins for the defense on class certification for direct purchasers in pharmaceutical antitrust cases.

"That was a major victory that brought together a cross-office team," Weissman said.

--Additional reporting by Bryan Koenig, Khorri Atkinson, Hailey Konnath and Christopher Cole. Editing by Ellen Johnson.