



Mark A. Jacobson

Member

Minneapolis

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Practice Areas

- Antitrust
- Commercial Litigation
- Franchise Disputes
- Intellectual Property Litigation

Industry Sectors

- Health Care & Life Sciences
- Sports

Education

- University of Minnesota Law School, J.D., *magna cum laude*, 1987
- University of North Carolina - Chapel Hill, B.A., 1983

Bar Admissions

- Minnesota
- District of Columbia

Court Admissions

- U.S. Supreme Court
- U.S. Court of Appeals for the Third Circuit
- U.S. Court of Appeals for the Eighth Circuit
- U.S. Court of Appeals for the Ninth Circuit
- U.S. Court of Appeals for the District of Columbia Circuit
- U.S. District Court -- North Dakota
- U.S. District Court -- Minnesota
- U.S. District Court -- Northern District of Illinois
- U.S. District Court -- District of Columbia

Affiliations

American Bar Association, Litigation; Antitrust; and Franchising Sections, Member

Minnesota State Bar Association, former General Assembly & General Policy Committee Member; Litigation Section Member; Antitrust Section Council Member, Former Chair, Treasurer, Secretary

Hennepin County Bar Association, Civil Litigation Section

Federal Bar Association, Member

District Court for Minnesota, Federal Practice Committee Member, 2009-2012

The Center for Victims of Torture, Board Member and Chair of Development Committee

Mark has more than 30 years' experience representing clients in antitrust litigation, investigations and counseling, contract disputes, class action litigation, franchise, dealer and sales representative disputes, appeals, temporary restraining orders and preliminary injunctions, health industry litigation and regulation, trademark, copyright and patent infringement cases, and other business disputes. Mark represents both plaintiffs and defendants and particularly enjoys tackling complex legal issues that are intertwined with business issues.

Mark is often retained by referral or as local counsel to guide litigants through Minnesota courts. He has been a member of the Federal Practice Committee for the District of Minnesota, chair and member of the Minnesota State Bar Association Antitrust Section Council, and long-time member of the Minnesota State Bar Association Policy Committee and General Assembly. Mark is also an experienced in mediation, arbitration, and other alternative dispute resolution techniques as an advocate, mediator, and arbitrator.

Chambers and Partners rank Mark a Band 1 antitrust lawyer in Minnesota. *Best Lawyers* has named Mark its 2019 Lawyer of the Year – Antitrust Litigation in Minnesota.

Experience

On a motion to dismiss, obtained dismissal of Minnesota Franchise Act claims against franchisor and its executives, establishing conclusively that the Act's requirements can be waived through a choice of law term in the franchise agreement. Also obtained dismissal of breach of contract claims against franchisor and all claims of "control person" liability against individual corporate executive officers. *Hockey Enterprises, Inc. v. Total Hockey Products & Services, LLC*, 762 F. Supp.2d 1138 (D. Minn. 2011). Obtained voluntary dismissal of arbitration petition.

On behalf of purchasers of assets of investment firm, obtained temporary restraining order and preliminary injunction that effectively prevented arbitration of dozens of separate investor claims. Federal district court found clients likely to prevail in defeating arguments that arbitration was compelled by National Association of Securities Dealers rules and that purchasers were subject to successor liability. *Marshall, Miller & Schroeder, Inc. v. Behnke*, No. 01-CV-2264-J-CGA (S.D. Cal. Dec. 26, 2001).

For more than twenty years, acted as co-class counsel representing all National Football League players and the NFL Players Association in Sherman Act Section 1 antitrust conspiracy case *White v. National Football League*. Under a 1993 settlement favorable to the players, the class action court supervised successive collective bargaining agreements between the NFL and the players and acted as final adjudicator of player-team disputes involving discipline, entitlement to bonuses, etc. See, e.g., *White v. Nat'l Football League*, 585 F.3d 1129 (8th Cir. 2009) [Michael Vick bonus dispute].

On behalf of a significant Twin Cities property management company and as lead counsel for all defendants, obtained pre-discovery dismissal of most claims brought by a class of tenants for alleged violation of a Minnesota statute relating to lease-related fees, then used innovative strategy to pursue immediate appeal and obtained dismissal of all remaining claims at the Minnesota Court of Appeals.

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Bloomington, Minnesota, School District Gifted and Talented Advisory Committee, Member

Peace Lutheran Church, Church Council, President, Vice President

Peace Lutheran Church, Service Committee, Chair

Groton School Alumni/ae parent Admissions Committee, Member

Morehead-Cain Scholarship Alumni Scholar Selection Committee, Member

Awards & Honors

- *Chambers USA: America's Leading Lawyers for Business, Antitrust* - Minnesota, 2015-2019
- North Star Lawyer, Minnesota State Bar Association, 2014-2015
- *Best Lawyers in America*, Litigation-Antitrust and Litigation-Intellectual Property, 2011-2015, 2017-2019
- *Best Lawyers in America*, Litigation-Antitrust, Minneapolis "Lawyer of the Year" 2019
- *Minnesota Super Lawyers*, Intellectual Property Litigation and Business Litigation, 1999-2005, 2010-2017
- *Minnesota Super Lawyers* - Top 40 Business Litigation Lawyers, 2003
- *Minnesota Super Lawyers* - Top 40 Alternative Dispute Resolution Lawyers, 2003
- *Martindale Hubbell*, AV Preeminent and Top Rated Lawyer in Intellectual Property Litigation and Commercial Litigation, 1996-2018
- Hennepin County District Court, Appreciation & Recognition Award, Pro Bono Services, 2003
- *America's Top 100 High Stakes Litigators*

Persigehl v. Ridgebrook Invs. Ltd. P'ship, 858 N.W.2d 824 (Minn. App. 2015).

Obtained summary judgment in favor of client Experian Information Solutions dismissing claims of antitrust conspiracy, monopolization, and false advertising in the credit scoring industry. *Fair Isaac Corp. v. Experian Information Solutions Inc.*, 645 F. Supp.2d 734 (D. Minn. Jul. 24, 2009). This was followed by a four-week jury trial resulting in jury and bench trial verdicts in favor of client Experian rejecting plaintiffs' claims of trademark infringement (including a keyword advertising claim), passing off, unjust enrichment, and violation of Minnesota Deceptive Trade Practices Act, rejecting plaintiffs' claim for over \$300 million in damages, and granting Experian's counterclaim for fraud on U.S. Patent & Trademark Office. *Fair Isaac Corp. v. Experian Information Solutions Inc.*, 711 F. Supp.2d 991 (D. Minn. 2010). The United States Court of Appeals for the 8th Circuit affirmed the victory in all respects. *Fair Isaac Corp. v. Experian Information Solutions Inc.*, 2011 WL 3586429 (8th Cir. Aug. 17, 2011).

Represented American Home Products and American Cyanamid and acted as defense liaison counsel for 26 pharmaceutical manufacturer defendants defending against separate class action antitrust complaints under state law by direct purchasers (pharmacies) and indirect purchasers (consumers) in *In Re Minnesota Drug Pricing Litigation* and *Kerr/Fontaine v. Abbott Laboratories*. Defeated class certification in one case and successfully settled both cases.

Successfully resolved a dispute over post-closing working capital and debt purchase price adjustments and earnout payments following our client's sale of a business unit. The buyer initially claimed that no earnout was due, and that our client owed it several million dollars on the post-closing adjustments, but it ultimately agreed to pay our client a substantial sum and release an indemnification escrow seven months early.

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