

Competition Group Of The Year: Shearman & Sterling

By **Jessica Corso**

Law360 (February 10, 2022, 2:02 PM EST) -- Litigators at Shearman & Sterling LLP defeated the Federal Trade Commission at the Second Circuit last year, and its deal makers continue to advise ViacomCBS in its ongoing efforts to offload publisher Simon & Schuster, helping earn the firm a spot among Law360's 2021 Competition Groups of the Year.

In June 2021, the Second Circuit ruled in favor of Shearman client 1-800 Contacts Inc., overturning an FTC ruling that the online retailer violated antitrust laws by preventing competitors from buying certain keyword searches that the contact lenses provider said violated its trademark rights.

That allowed the company to file a trademark infringement suit against Warby Parker two months later for allegedly buying the term "1-800 contacts" in order to lure customers to its website that "deceptively and intentionally mimics" the look of 1800contacts.com, according to the complaint.

That Warby Parker suit was named by Law360 as one of six trademark cases to watch in 2022.

Shearman's Stephen Fishbein, a Law360 2021 Competition MVP, explained that the case was closely watched by his fellow litigators in part because it deals with the intersection of intellectual property and antitrust issues. Fishbein, who represented 1-800 Contacts in front of the Second Circuit and is representing the company again in the Warby Parker litigation, is the chair of the firm's white collar defense and investigations group.

Though this is the first year that Shearman's antitrust group has been recognized by Law360 as a Practice Group of the Year, the firm's white collar practice group was recognized in 2014 and 2015.

The groups work together closely, though, Fishbein said, noting that there is a lot of overlap in his work and the work overseen by David Higbee, the co-leader of the firm's global antitrust practice group.

"I got my start in both criminal and antitrust in the same cases, which were criminal price-fixing cases in the late 1990s," Fishbein said, pointing to federal investigations against those involved in the vitamin business.



"Those were at bottom criminal cases and there were accusations against individuals, some of whom ended up getting convicted of crimes, as well as companies," he said. "But the issue was violations of Section 1 of the Sherman Act, so there was complete overlap there."

Adam Hakki, Shearman's global managing partner and a Law360 2021 Banking MVP, agreed that the firm's antitrust attorneys aren't siloed and depend on the aid of litigators and transactional attorneys across the firm to get their work done.

"When it comes to the antitrust work we do, especially the litigation work and investigation work, we essentially operate as one group without walls across antitrust and litigation," he said. "When you combine all of those forces, you get the outcome or the type of results that you guys recognized us for this year."

The firm's antitrust team is also advising ViacomCBS on competition law aspects related to the proposed \$2.2 billion sale of Simon & Schuster to Penguin Random House LLC that was announced in Nov. 2020.

The U.S. Department of Justice sued Penguin Random House in 2021 to try to block the sale on antitrust grounds. That lawsuit is ongoing, and Shearman said it continues to defend the transaction on behalf of ViacomCBS in front of the Justice Department and secured phase one clearance for the deal before the U.K.'s Competition and Markets Authority in May 2021.

Also on the merger front, the firm's attorneys are defending JetBlue in another Justice Department lawsuit attempting to block an alliance that it has built with American Airlines to coordinate flights out of four major Northeastern airports.

Outside its courtroom activity, the firm's antitrust team also had a major announcement last year on the hiring front. Ryan Shores rejoined the firm in March 2021 after a couple of years as the associate deputy attorney general at the Justice Department, where he led enforcement efforts that led to a monopolization lawsuit against Google.

From the outside looking in, 2021 may have seemed exceptional for the firm's antitrust group, but it really wasn't, according to Higbee. The firm has a track record of guiding clients through mergers, but clients aren't always eager for publicity, he said.

"Any good lawyer will tell you that some of their best work is never published," Higbee said. "Some of the things we do are successful when our clients are not in the news."

He did add, however, that the firm has merger matters "in the queue" that could get significant attention in 2022.

--Additional reporting by Bill Donahue, Bryan Koenig, Matthew Perlman and Justin Wise. Editing by Ellen Johnson.
