



Contact

David A. Munkittrick

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David Munkittrick is a litigator and trial attorney in Proskauer's Antitrust, Copyright and Privacy Groups. He litigates cases throughout the country, on a wide variety of matters, and at all stages of litigation, from complaint through appeal.

Antitrust

David advises clients regarding antitrust issues in a wide variety of industries, including pharmaceuticals, finance, automotive and health care. He handles a wide range of antitrust matters, including class actions, competitor suits and price discrimination claims. He was a member of the Proskauer team that secured a complete defense verdict in a widely reported price discrimination jury trial. In addition, as part of a multi-district price fixing case, he helped challenge, negotiate and significantly narrow, on behalf of a third party, a subpoena that the court called one of the most expansive ever served.

Representative antitrust matters include:

- *TrueEx LLC v. MarkitServ Ltd.* Defense of antitrust claim seeking to impose a duty to deal with a competitor in the alleged market for post-trade processing of Interest Rate Swaps
- *Mathew Enterprise Inc. v. Chrysler Group LLC.* Part of the trial team for

Chrysler in the successful defense of a \$5.1 million price discrimination action brought by a dealer, obtaining a jury verdict for Chrysler after a two week jury trial

- *Castro v. Sanofi Pasteur Inc.* Counsel for Sanofi Pasteur, defending a nationwide class action alleging monopolization of the alleged market for meningitis vaccines in the United States through bundling and other exclusionary conduct

Entertainment/Copyright

With his background in music, David assists clients, including major record labels, music publishing companies, recording artists and other media and entertainment companies, in navigating complex copyright issues, and has helped obtain dismissal of copyright infringement claims for clients in the music and publishing industries. He also has represented artists in matters involving privacy rights and related issues.

Representative entertainment/copyright matters include:

- *Archie MD, Inc. v. Elsevier, Inc.* Defense of Elsevier against allegations of mass copyright infringement. Successful summary judgment motion resulted in complete dismissal of vast majority of the claims
- *Rose v. Hewson.* Representing U2 against claims the band's song "The Fly" infringes plaintiff's song "Nae Slappin"
- *Universal Attractions, Inc. v. Live Nation Entertainment, Inc.* Representing Live Nation and Ticketmaster in defense of false advertising claims
- *Cole v. Blackwell Fuller Music Publishing.* Defense of music publishers in copyright infringement suit regarding rights to Bob Marley songs
- *Francescatti v. Germanotta.* Represented Lady Gaga in defense of a copyright infringement suit regarding the song "Judas", obtaining complete dismissal of the claims on summary judgment.
- *Buday v. New York Yankees Partnership.* Won dismissal of a copyright infringement suit against the Yankees

Privacy and Other Commercial Litigation

David has been at the forefront of litigating standing issues following the Supreme Court's *Spokeo* decision, particularly in FACTA litigation. He has also authored and co-authored chapters in the "Proskauer on

Privacy” treatise discussing location privacy and data breach litigation.

Representative matters include:

- *Katz v. The Donna Karan Company LLC*. On behalf of Donna Karan, defending a purported class action under the Fair and Accurate Credit Transaction Act. Dismissal of the complaint on standing grounds was upheld by the Second Circuit.
 - *Jackson Family Wines, Inc. v. Diageo North America, Inc.* Represented Diageo in trademark infringement litigation
 - *PBGC v. The Renco Group, Inc.* Represented Renco at trial in an ERISA litigation
 - *VICI Racing v. T-Mobile USA, Inc.* Defense of T-Mobile in contract dispute
 - *Cappicille v. Suburban Propane, L.P.* Represented Suburban Propane defending a purported class action
- David maintains an active pro bono practice and has been repeatedly recognized as Empire State Counsel by the New York State Bar Association for his pro bono service. He also is a recipient of Proskauer’s Golden Gavel Award for excellence in pro bono work.

Prior to joining Proskauer, David was a constitutional law fellow at the Institute for Justice, working on high-profile First Amendment and property rights cases.

While in law school, he served as an intern judicial clerk to the Honorable Jane E. Magnus-Stinson at the United States District Court for the Southern District of Indiana. He also was a finalist in the Sherman Minton Moot Court competition, in which he was the recipient of the Best Brief Award.

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Practices

Litigation, Copyright, Antitrust, Privacy & Cybersecurity

Industries

Entertainment

Education

Indiana University Maurer School of Law, J.D., 2010

cum laude

Oberlin College, B.A., 2007

Oberlin College, B.Mus, 2007

Admissions & Qualifications

New York

Court Admissions

U.S. District Court, New York, Eastern District

U.S. District Court, New York, Southern District

U.S. Court of Appeals, Ninth Circuit

U.S. Court of Appeals, Second Circuit

Memberships

New York City Bar Association: Science and Law Committee

New York State Bar Association: Entertainment, Arts and Sports

Law Section

American Bar Association: Antitrust Section