



## Stephen McIntyre

Partner

Los Angeles

D: +1-213-430-8382

smcintyre@omm.com

Stephen McIntyre is a versatile antitrust lawyer who represents clients in civil and criminal investigations, government enforcement actions, and high-stakes private litigation. Stephen brings skill, insight, and practicality to each matter—be it a nationwide class action, a suit against a client’s chief competitor, or an inquiry from a federal or state antitrust enforcer.

Stephen has secured victories for clients in the pharmaceutical, technology, and entertainment industries, among others. His recent successes include a Ninth Circuit victory affirming the dismissal of antitrust conspiracy claims against manufacturers of dynamic random access memory (DRAM) chips; a sweeping summary judgment win on behalf of ExxonMobil in an antitrust conspiracy case in which plaintiffs sought tens of billions of dollars in damages; the complete dismissal of monopolization and “reverse-payment” claims in *In re Humira*, an antitrust case involving the world’s highest-selling biologic drug; and an across-the-board summary judgment win in *In re Optical Disk Drives*, a consumer class action in which plaintiffs sought billions in alleged damages from major electronics companies.

Stephen is a leader in the antitrust community, having served on the Executive Committee of the California Lawyers Association’s Antitrust & Unfair Competition Law Section and the Executive Committee of the Los Angeles County Bar Association’s Antitrust and Unfair Business Practices Section. From 2021 to 2022, Stephen served as Editor-in-Chief of the scholarly journal *Competition*. In 2022, *Law360* honored Stephen as a “Rising Star” in Competition, and in 2021, *The Daily Journal* selected Stephen as one of its “Top Antitrust Lawyers” for the year.

### Admissions

#### *Bar Admissions*

California

#### *Court Admissions*

US District Court for the Central, Eastern, and Northern Districts of California

US District Court for the Northern District of Florida

US Court of Appeals, Third and Ninth Circuits

### Education

Duke University, J.D.

Duke University, M.A., East Asian Studies

Brigham Young University, B.A., Chinese: *magna cum laude*

Fluent in Mandarin Chinese, Stephen maintains an active pro bono practice representing refugees and asylum seekers.

## Experience

- Represented Samsung Electronics Co. Ltd. in *In re Dynamic Random Access Memory (DRAM) Indirect Purchaser Antitrust Litigation* and *In re Dynamic Random Access Memory (DRAM) Direct Purchaser Antitrust Litigation*, putative class actions in which the plaintiffs alleged a conspiracy to restrict the global supply of DRAM products. Repeatedly prevailed over direct- and indirect-purchaser plaintiffs, securing dismissals of the plaintiffs' successive complaints. Stephen repeatedly prevailed over direct- and indirect- purchaser plaintiffs, securing dismissals of the plaintiffs' successive complaints. In 2022, the Ninth Circuit unanimously affirmed the dismissal with prejudice of the indirect purchasers' complaint, which led the direct purchasers to abandon their appeal. *See In re Dynamic Random Access Memory (DRAM) Indirect Purchaser Antitrust Litig.*, 28 F.4th 42 (9th Cir. 2022).
- Secured the dismissal with prejudice of attempted monopolization and conspiracy claims asserted against Novartis Pharmaceuticals by one of its largest competitors. *See Novartis Pharma AG v. Regeneron Pharms.*, 582 F. Supp. 3d 26 (N.D.N.Y. 2022).
- Represented Samsung Bioepis in *In re Humira (Adalimumab) Antitrust Litigation*, the first "reverse-payment" litigation involving biologics and biosimilars. Stephen played a leading role in developing the defendants' dismissal arguments. In June 2020, the district court granted defendants' motion to dismiss in full, and in August 2022, the Seventh Circuit unanimously affirmed. *See In re Humira (Adalimumab) Antitrust Litigation*, 465 F. Supp. 3d 811 (N.D. Ill. 2020), *aff'd sub nom. Mayor & City Council of Baltimore v. AbbVie Inc.*, 42 F.4th 709 (7th Cir. 2022).
- Defended ExxonMobil Corp. against an antitrust class action alleging that oil refiners colluded to increase California gasoline prices by reducing the supply of gasoline to the state. In September 2022, the district judge granted summary judgment in favor of ExxonMobil and its co-defendants, extinguishing claims seeking tens of billions of dollars in total damages.
- Obtained summary judgment on behalf of Par Sterile Products LLC and Par Pharmaceutical Cos., Inc. in an antitrust case alleging that the defendants monopolized the market for a life-saving injectable product by entering into unlawful exclusive agreements with suppliers of the active pharmaceutical ingredient used to manufacture the product.
- Wrote the winning summary judgment brief on behalf of Samsung Electronics Co. Ltd. in *In re Optical Disk Drives Antitrust Litigation*, wiping out class plaintiffs' multi-billion-dollar treble damages claims against the world's leading electronics manufacturers. In November 2019, the Ninth Circuit upheld the decision. *See In re Optical Disk Drive Prods. Antitrust Litig.*, 785 F. App'x 406 (9th Cir. 2019).
- Represented Impax Laboratories at trial in a Federal Trade Commission enforcement action challenging an alleged "reverse-payment" patent settlement. Stephen took the direct examination of Impax's principal economic expert at trial and wrote Impax's post-trial briefs.
- Represented legendary boxing promoter Top Rank in a high-profile antitrust and unfair competition lawsuit against famous boxing magnate. After defeating a hard-fought motion to dismiss, the O'Melveny team obtained a favorable settlement with significant monetary and structural relief for Top Rank.
- Successfully persuaded the Federal Trade Commission to end its investigation of an allegedly anticompetitive patent settlement agreement without taking any enforcement action.

- Represented an electronic components manufacturer in obtaining Federal Trade Commission approval of proposed acquisition by its largest competitor.
- Defended a major Asian airline in multi-district class action litigation alleging global price-fixing conspiracy in the air cargo shipping industry.
- Co-authored an amicus brief to the U.S. Supreme Court on behalf of technology-focused think tank supporting a petition for certiorari in a case involving antitrust immunity under Section 230 of the Communications Decency Act
- Co-authored an amicus brief to the U.S. Supreme Court on behalf of several civil rights organizations supporting a petition for certiorari in Fourth Amendment excessive-force case.
- Successfully represented multiple asylum seekers and refugees seeking protection in the United States.

## Professional Activities

### Author

- “The FTAIA’s “Domestic Effects” Exception: Why the Ninth Circuit Got It Right,” *Competition* (Fall 2020)
- “May I Have Another? Antitrust Immunity For Serial Petitioning,” *Daily Journal* (June 24, 2020)
- “Private Rights and Public Wrongs: Fair Use as a Remedy for Private Censorship,” *Gonzaga Law Review* (2012-2013)
- “The Yang Obeys, But the Yin Ignores: Copyright Law and Speech Suppression in the People’s Republic of China,” *UCLA Pacific Basin Law Journal* (2012)
- “Trying to Agree on Three Articles of Law: The Idea/Expression Dichotomy in Chinese Copyright Law,” *Cybaris: An Intellectual Property Law Review* (2010)

### Co-Author

- “High Court Disgorgement Ruling Doesn’t Empower FTC,” *Law360* (July 8, 2020)
- “Extraterritoriality After Vitamin C: Are We Between a Rock and a Hard Place?,” *Antitrust Magazine* (Fall 2018)
- “Antitrust Class Actions After the Supreme Court’s 2015 Term,” *Bloomberg BNA Antitrust & Trade Regulation Report* (November 2015)
- “Where to Draw the Line: Should the FTAIA’s Domestic Effects Test Apply in Criminal Prosecutions?,” *Antitrust Magazine* (Summer 2015)
- “The Continuing Violations Doctrine: Limitation in Name Only, or a Resuscitation of the Clayton Act’s Statute of Limitations?,” *Competition* (Spring 2015)
- “The Continuing Relevance of Patent Validity in Reverse-Payment Litigation,” *Concurrences* (Spring 2014)
- “Preserving Legal Privileges in the U.S., California, and the EU,” *Antitrust Report* (December 2012)
- United States Chapter, *Intellectual Property and Antitrust: Getting the Deal Through* (2012-2016 editions)

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## Presenter

- “At the Intersection of Antitrust & Intellectual Property: Recent Trends,” CLE Presentation (October 2018)
- “Product Hopping, Life Cycle Management, and the *Namenda* and *Doryx* Decisions,” O’Melveny & Myers LLP Life Sciences CLE Marathon (September 29, 2016)
- Gave guest lectures on cartel enforcement in antitrust class at the University of Southern California Gould School of Law (April 2015 & April 2016)
- “Beyond *FTC v. Actavis*: Recent and Emerging Issues at the Intersection of Antitrust and the Pharmaceutical Industry,” Antitrust and Unfair Business Practices Section of the L.A. County Bar Association (May 29, 2015)
- “Courtroom Drama with Chinese Characteristics: A Comparative Approach to Legal Process in Chinese Cinema,” 64th Annual Kentucky Foreign Language Conference, East Asian Studies Division, University of Kentucky (April 14-16, 2011)

## Honors & Awards

- Recognized by *The Legal 500 US* in Civil Litigation/Class Actions: Defense (2022)
- Named to the 40 & Under Hot List for Competition and Antitrust by *Benchmark Litigation* (2022)
- Recognized by *Law360* as a “Top Attorney Under 40” in Competition (2022)
- Selected as one of *The Daily Journal’s* “Top Antitrust Lawyers in California” (2021)