

In the News

O'Melveny's Simmons, O'Rourke, Schaeffer Co-Author ABA Antitrust Magazine Article on Actavis Decision



December 9, 2013

RELATED PROFESSIONALS

Scott Schaeffer

Shanghai
D: +86-21-2307-7089

Ian Simmons

Washington, DC
D: +1-202-383-5106

O'Melveny & Myers partners Kenneth O'Rourke and Ian Simmons and associate Scott Schaeffer co-authored the article "Viewing *FTC v. Actavis* Through the Lens of Clayton Act Section 4," which appears in the Fall 2013 issue of *ABA Antitrust Magazine*. According to the piece, the Supreme Court's decision in *FTC v. Actavis* indicates that reverse-payment settlement agreements are subject to the rule-of-reason antitrust standard and are neither presumptively lawful nor presumptively unlawful, while the rule of reason's application in practice is less certain. "The Court suggests that the rule of reason is workable because parties 'normally' need not litigate the validity of the underlying patents," the authors write. "Whether that is true in the context of public agency litigation is one thing," but it is "quite another in private actions pursuant to the Clayton Act or similar state laws, in which patent analysis and litigation are largely unavoidable," they argue.

Simmons, who resides in the Firm's Washington, DC office, and O'Rourke, who is based in the Los Angeles office, are members of O'Melveny's Antitrust and Competition Practice. Schaeffer is a member of the Firm's Litigation Department and resides in the Washington, DC office.