

California Powerhouse: Gibson Dunn

By **Henrik Nilsson**

Law360 (August 21, 2023, 2:02 PM EDT) --Gibson Dunn & Crutcher LLP remains a stalwart of the California legal landscape more than 130 years after its founding, continuing to rack up wins like fending off a trademark infringement suit against social media giant TikTok and defending its historic victory for Apple against plaintiff Epic Games.

When Epic Games Inc. sued Apple Inc. in August 2020, the tech giant tapped the Law360 California Powerhouse to defend against claims that it monopolizes the distribution of apps on its devices through strict controls that block competing app stores and requires the use of Apple's own in-app payment system, which collects commissions of up to 30%.

"People called it the Super Bowl of antitrust law," explained Theane Evangelis, a partner in Gibson Dunn's Los Angeles office. "And we were there and won a historic victory for Apple at trial and in the Ninth Circuit, defeating the antitrust claims brought by Epic Games."

With Gibson Dunn on its team, Apple in September 2021 first defeated the bulk of Epic's federal antitrust claims under the Sherman Act. U.S. District Judge Yvonne Gonzalez Rogers held that while Apple has a more than 55% market share "and extraordinarily high profit margins," it's not enough to show "antitrust conduct," adding that success is not illegal.

And then Apple successfully defended the win at the Ninth Circuit with the help of Gibson Dunn and Weil Gotshal & Manges LLP.

The panel issued its ruling in April, affirming the lower court's decision. It also sided with Apple on a breach of contract claim against Epic over moves that got the developer booted from the app store and reversed a finding that Epic is not obligated to pay Apple's attorney fees.

The case threatened Apple's entire business model for the app store and could have had crippling consequences for the tech giant and the economy, according to Ted Boutrous, a partner at Gibson Dunn.

Apple hit a \$3 trillion market valuation at the beginning of the year, and the Ninth Circuit noted that the case touched on the debate about the power of online transaction platforms in our economy and democracy.



"Many of our cases involve issues that go beyond the party and go beyond litigation," Boutrous said. He noted that while it's important to understand the social implications of certain cases, public policies should be left to the branches of government, saying his job is to ensure "that the courts stick to applying the law to the facts in a way that's consistent with the rule of law."

Gibson Dunn's headcount in California has grown to 532, with offices in Century City, Los Angeles, Orange County, Palo Alto and San Francisco. That's about a third of the firm's 1,509 lawyers nationwide. It has additional lawyers at its offices in Europe, Asia and the Middle East.

Thanks in part to its California presence, the firm has scored other victories for Golden State-based tech luminaries. Gibson Dunn recently represented Uber Technologies Inc. and Postmates Inc. in persuading the Ninth Circuit to partially revive a suit claiming that California's Assembly Bill 5 governing worker classification treats the companies unfairly.

Evangelis argued the case in the Ninth Circuit, and in March, a three-judge panel published a unanimous opinion holding that a California district court erroneously tossed the companies and two drivers' Equal Protection Claims against the Golden State. The appellate panel said that A.B. 5's motivation was to disfavor companies like them despite claiming to protect misclassified workers.

The firm also secured a summary judgment victory for its client energy giant Chevron in October 2022 in a major California federal antitrust suit dating back to 2015.

A group of gas buyers alleged that eight refining companies — including Chevron, BP and Exxon Mobil — started conspiring as early as 2011 to artificially raise the price of gasoline sold in California by employing several coordinated actions aimed at reducing supply in the state. The activities allegedly included agreements to exchange barrels of gasoline, block imports and increase exports.

However, in a sprawling 103-page decision clearing the defendants, U.S. District Judge Jinsook Ohta wrote that evidence offered by the gas buyers does not support a "reasonable inference" that the eight refining companies named in the suit conspired to fix prices and instead suggests they were just responding to the market.

On the corporate transaction front, Gibson Dunn represented California-based Platinum Equity LLC in its portfolio company Solenis' \$4.6 billion acquisition of Diversey Holdings Ltd. The firm also counseled Elliott Investment Management LP in its \$900 million convertible preferred equity investment in Western Digital Corp.

One of the firm's specialties is jumping in during the later stages of litigation, as it did for TikTok in *Stitch Editing Ltd. v. TikTok Inc.*

London-based Stitch said in its 2021 lawsuit that TikTok's "stitch" video editing tool infringed on its service mark "Stitch Editing" registered with the U.S. Patent and Trademark Office. The lawsuit also alleged infringement of the phrase "stitch," which the company said it has used in its business since 2010 but never registered with the USPTO. Stitch sought up to \$116 million in actual damages.

TikTok hired Gibson Dunn at the eleventh hour after the district court had denied its summary judgment motion and when discovery was complete. With Gibson Dunn representing the social media platform at trial, a California federal jury handed TikTok a complete defense verdict.

"We're often put in a situation where we have to write a new playbook," Evangelis said. "And that's what we love doing."

She added that the firm always considers an eventual appeal, even at the trial level.

"Part of what we have done, and I think is one of our specialties, is embedding our appellate lawyers in our trial teams because these cases often involve new issues that are novel and oftentimes haven't been litigated before," Evangelis said.

Gibson Dunn has also been involved in culturally sensitive cases.

When it was discovered that Serranus Clinton Hastings, the first chief justice of the California Supreme Court, had a role in the genocide against indigenous populations in California, then-University of California, Hastings College of Law sought to change its name to UC College of the Law, San Francisco.

Descendants of Hastings sued to block the proposed name change. Gibson Dunn helped the school defend itself against a preliminary injunction. The name change went through earlier this year.

Boutrous said the case is not about political correctness despite the plaintiffs framing the case as a "war on woke."

"It doesn't have to be a culture war issue," Boutrous said. "To the extent they filed the lawsuit, it's a legal issue. And we believe the court was correct to deny the preliminary injunction and allow the name change to go forward. We're looking forward to the next stage of the case to get the whole thing dismissed."

With many of Gibson Dunn's clients at the forefront of technological innovation, Boutrous and Evangelis expect to see more antitrust and employment law challenges in the future. They said artificial intelligence also brings new legal questions regarding copyright and defamation.

"We represent some of the most innovative, exciting companies in the world, and they're based here in California," Evangelis said. "But new products and business models are raising new legal issues and legal challenges. But we're excited to help our clients navigate those issues and help them do what they do best."

--Additional reporting by Madeline Lyskawa, Irene Spezzamonte, Matthew Perlman, Bryan Koenig, James Mills, Al Barbarino and Craig Clough. Editing by Kristen Becker.