

## Mark S. Popofsky



Partner  
Litigation Department  
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Competition Practice Group

Areas of Experience: Antitrust and  
Trade Regulation; E-Commerce;  
Intellectual Property; International;  
Internet Law; Mergers and  
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J.D., magna cum laude, Harvard  
Law School 1993; Executive Editor,  
Harvard Law Review  
A.B., magna cum laude, Brown  
University 1990 (Phi Beta Kappa)  
Law Clerk to Judge Dorothy W.  
Nelson, U.S. Court of Appeals for the  
Ninth Circuit

Admissions: California; District of  
Columbia

Adjunct Professor, Georgetown  
University Law Center (2000-2004)

Mark S. Popofsky, a partner since joining Kaye Scholer from the U.S. Department of Justice in 1999, practices in our Antitrust, Intellectual Property, and various Technology practice groups. He represents clients in antitrust, intellectual property, and commercial litigation, counsels clients concerning a variety of competition-related matters, and represents parties in mergers and other transactions before the U.S. Department of Justice and Federal Trade Commission. Mr. Popofsky also chairs Kaye Scholer's Technology and Competition Practice Group, which focuses on the intersection of law and technology. Through this Group, Mr. Popofsky assists clients in formulating Internet privacy policies, establishing standard-setting consortia, and resolving technology-related antitrust issues.

Illustrative matters include representation of:

- R.J. Reynolds Tobacco Co. in securing unanimous clearance from the FTC of its proposed merger with Brown & Williamson, which combined the second and third largest companies in the industry.
- Onex Corporation and Loews Cineplex Entertainment Corporation in *Reading International, Inc. v. Oaktree Capital Management LLC* (S.D.N.Y.), an antitrust litigation in which Mr. Popofsky secured dismissal of numerous claims on standing grounds.
- Metallgesellschaft in *Metallgesellschaft AG v. Sumitomo Corp. of Am.*, 325 F.3d 836 (7th Cir. 2003), a precedent-setting international antitrust litigation.

Prior to joining Kaye Scholer, Mr. Popofsky served as Senior Counsel to the Assistant Attorney General in charge of the U.S. Department of Justice's Antitrust Division. In that capacity, Mr. Popofsky served as counsel in *United States v. Microsoft Corp.*, the Department's landmark monopolization suit. Prior to being named Senior Counsel, Mr. Popofsky served as an attorney in the Antitrust Division's Appellate Section. His notable successes included *United States v. Nippon Paper Indus. Co.*, 109 F.3d 1 (1st Cir. 1997), the precedent-setting decision which upheld criminal extraterritorial enforcement of the Sherman Act.

In addition to his appellate expertise, Mr. Popofsky represented the United States in numerous antitrust merger and non-merger investigations and served as a Special Assistant United States Attorney in Alexandria, Virginia (the "Rocket Docket"). The 30 cases he tried, many of which involved expert witnesses, included securing felony convictions before juries.

Mr. Popofsky is an Adjunct Professor at the Georgetown University Law Center, where for several years he has taught the Advanced Antitrust Law and Economics Seminar. He is a frequent speaker and panelist on competition-related issues.