



## Richard B. Dagen

Partner

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### SPOTLIGHT

*Lawdragon* 500 Leading Dealmakers in America 2024

*National Law Journal* M&A and Antitrust Trailblazer 2015

FTC Award for Distinguished Service 2014

FTC Brandeis Award for Outstanding Litigator 2000

### PRACTICE AREAS

Antitrust

### EDUCATION

JD – Emory University School of Law (1983)

M.Phil – Yale University (1981)

MA, Economics – Yale University (1980)

BA – University of Chicago (1978)

### ADMISSIONS

District of Columbia

U.S. Court of Appeals for the District of Columbia

U.S. Court of Appeals for the Fourth Circuit

### PROFILE

In 2015, *The National Law Journal* selected Rick to its inaugural list of Antitrust Trailblazers. This honor was based on accomplishments during his long tenure at the FTC, where Rick served in key roles (e.g., lead counsel, manager) in both federal and administrative trials and investigations involving some of the most important FTC merger and non-merger cases of the past twenty plus years. For example, Rick successfully served as lead trial attorney in *North Carolina State Board of Dental Examiners*, a case that the Supreme Court recently affirmed. In addition, Rick had principal roles in *Toys "R" Us*, *Three Tenors*, *Heinz*, *Rambus*, *Abbott Labs*, *Unocal*, *Intel*, *Dell*, *Whole Foods* and *Wright Medical*. His varying responsibilities included all aspects of trying cases through to verdict and on appeal (including, victories in the DC, Fourth, Sixth and Seventh Circuits). Rick is one of the leading authorities on the FTC's Section 5 "Unfair Methods of Competition" authority and state action immunity.

Rick's representative matters since joining Axinn include the following:

- Serving as antitrust counsel for the University of Pittsburgh Medical Center (UPMC), including successfully defending against Sherman Act claims in the Western District of Pennsylvania, and affirmed in the Third Circuit, as well as counseling regarding hospital acquisitions.
- Played a principal role in getting Section 1 claims dismissed against Stanley Black & Decker in a matter involving collusion and standard setting activities.
- Representing a caustic soda manufacturer in class action cases brought by direct and indirect purchasers alleging price fixing and

U.S. District and Bankruptcy Courts for  
the District of Columbia

U.S. District Court District of Maryland

U.S. Supreme Court

output reductions.

- Represented a biotech company in an action by a competitor and a class action involving standard setting conspiracy claims.
- Represented the Alliance of Artists and Recording Companies (AARC) in the D.C. district court and D.C. Court of Appeals.
- Advocated on behalf of the Association of Dental Service Organizations before state boards and legislatures relating to potential anticompetitive rules, regulations, and enforcement actions.

While at the FTC, Rick's managerial responsibilities included advising the Bureau and the Commission on case merits, litigation risks and remedies. He has reviewed business conduct and proposed mergers in a broad range of industries, including technology, energy, food, entertainment, consumer goods, medical devices, pharmaceuticals and health care. Rick has been particularly active in matters involving the intersection of intellectual property and antitrust, including the FTC's first forays into the non-disclosure of patents in standard setting (e.g., Dell, Rambus, Unocal), Hatch-Waxman/reverse payment cases (Hoechst-Andrx) and analysis of patent assertion entities.

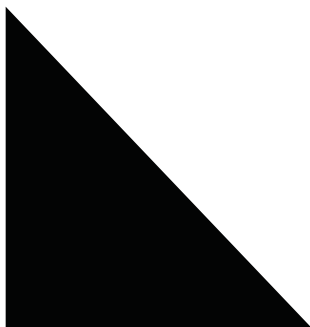
Prior to joining the FTC, Rick served as counsel to the chairman and vice chairman of the U.S. International Trade Commission and was a litigation associate in administrative law, antitrust and general litigation at Sidley & Austin in Washington, DC.

## PROFESSIONAL ACTIVITIES

- American Bar Association, Section of Antitrust Law and Entertainment and Sports Industry Forum

## EXPERIENCE

- Lead counsel for the University Pittsburgh Medical Center (UPMC) in connection with antitrust matter in the Western District of Pennsylvania.
- Led Axinn team advising UPMC in successful acquisitions of PinnacleHealth System, Susquehanna Health System, and others.
- Lead counsel for the Alliance of Artists and Recording Companies (AARC) in connection with its currently pending Class Action Complaint against General Motors, Ford, Chrysler, Denso, Clarion,



Mitsubishi Electric Automotive America and Mitsubishi Electric U.S. alleging violations of the Audio Home Recording Act of 1992 (AHRA).

- Lead role in gaining dismissal of most counts in complaint filed in the Eastern District of Virginia (affirmed by Fourth Circuit) alleging that Stanley Black & Decker participated in an antitrust conspiracy.
- Antitrust counseling to Google, Thermo Fisher, the Association of Dental Support Organizations and others.

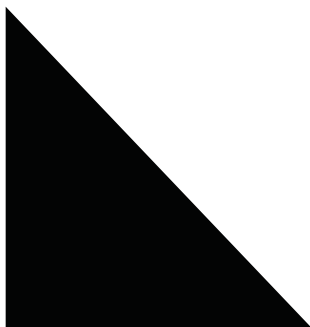
## FTC

- Lead counsel in successful government challenge in *FTC v. Heinz/Beechnut* merger.
- Lead counsel in obtaining merger consent in *Wright Medical/Orthomet* (innovation market).
- Lead counsel in successful government enforcement action in *FTC v. Toys “R Us* (conduct).
- Lead counsel in successful government enforcement action in *FTC v. N.C. State Board of Dental Examiners* (conduct).
- Management or other involvement in numerous significant cases and litigations, including
  - *FTC v. Polygram* (3 Tenors) (joint venture analysis)
  - *FTC v. Rambus* (Section 2 standard setting)
  - *In re Dell* (Section 5 standard setting)
  - *In re Intel* (monopolization)
  - *YKK* (Section 5 invitation to collude)
  - *FTC v. Abbott* (first restitution case)

*\* Includes matters handled prior to joining Axinn*

## HONORS

- *Lawdragon*, 500 Leading Dealmakers in America (2024)
- Rick was the recipient of the FTC’s Brandeis Award for Outstanding Litigator in 2000 and the FTC’s Award for Distinguished Service in 2014.
- Kramer Fellowship, a sabbatical year awarded each year to a staff person involved in antitrust from either the FTC or the Department



of Justice, to Harvard Law School during 1997-1998.

- In 2015, he was named to the *National Law Journal's* list of M&A and Antitrust Trailblazers.

