

HIGH TECH/MEDIA PRACTICE

Constantine Cannon has represented many clients in the media, telecommunications, and high technology industries, including integrated media companies, TV broadcasters, competitive distributors of video programming, telecommunications providers, and innovative start-ups. We have been litigation and regulatory counsel and have otherwise advised these entities on antitrust, copyright, and other areas—appearing in federal courts and before the Department of Justice Antitrust Division, the Federal Trade Commission, the Federal Communications Commission, and state Attorneys General. Below is a list of major matters that we have undertaken on behalf of clients that compete in these industries.

TruePosition v. Ericsson, et al. In a case arising out of mobile technology standard-setting activities, Constantine Cannon represents technology company TruePosition against Qualcomm, Ericsson, Alcatel-Lucent, and 3GPP. The federal antitrust lawsuit alleges that the **defendants** conspired to thwart the inclusion of TruePosition's technology in global 4G wireless standards, thereby excluding it from the market. The case is currently in the discovery phase with a trial set for 2014.

Nexstar Broadcasting, Inc. v. Granite Broadcasting Corp. Constantine Cannon represented Nexstar Broadcasting, Inc., an owner and operator of multiple television stations across the U.S., in its antitrust suit against its competitor Granite Broadcasting Corporation in the United States District Court for the Northern District of Indiana. The litigation, filed on July 25, 2011, alleged that Granite violated federal and state antitrust laws by having unlawfully acquired control over the sale of television broadcast local spot advertising in the Fort Wayne, Indiana, Designated Market Area (DMA) by having acquired control of local spot advertising sales on five of the six national television broadcast network affiliations in the Fort Wayne DMA (NBC, ABC, FOX, MyNetworkTV, and The CW). Nexstar alleged that Granite's exclusion of Nexstar's Fort Wayne television station, WFFT-TV, from the "must-have" programming of these national networks had injured WFFT-TV's and Nexstar's ability to sell local spot advertising and had raised WFFT-TV's costs of producing television programming.

The firm defeated Granite's motion to dismiss Nexstar's complaint, and also defeated Granite's motion for reconsideration, or in the alternative for interlocutory appeal, of the court's denial of Granite's motion to dismiss, thereby allowing the case to proceed to discovery. On February 6, 2013, Nexstar entered into a new affiliation agreement with the Fox Broadcasting Company (FOX) for WFFT-TV in Fort Wayne, Indiana, beginning March 1, 2013. On February 6, 2013, the parties mutually agreed to settle the lawsuit and stipulated to dismissal of the lawsuit with prejudice.

WNET, Thirteen et al. v. Aereo, Inc. Constantine Cannon is counsel to Aereo, Inc., a company that provides consumers with advanced technology to receive, record, and watch via the Internet local broadcast TV programming, in a copyright infringement action brought against Aereo by several TV broadcasters and networks. On April 1, 2013, the U.S. Court of Appeals for the Second Circuit affirmed the trial court's denial of the broadcasters' and networks' motion to preliminarily enjoin Aereo's technology.

Bartholdi Cable Company, Inc. (formerly Liberty Cable Company, Inc.) v. Time Warner Inc., et al. Constantine Cannon represented Liberty Cable in its monopolization case against the former Time Warner. Liberty alleged, among other things, that Time Warner stifled competition in the cable television market in the New York metropolitan area through a campaign of predatory and deceptive conduct. The firm secured a favorable settlement for its client on the first day of the trial.

Opposition to Comcast Corp. and Adelphia Communications Cable System Swaps.

Constantine Cannon represented DirecTV before the Federal Communications Commission and the Federal Trade Commission in opposing these transactions on the grounds that they would give Comcast monopolies in certain markets over the distribution of video programming, thereby giving Comcast the incentive to deny Comcast-owned sports programming to rival distributors to whom Comcast had been providing such programming. As a condition on the transactions, the FCC required “baseball arbitration” for Comcast’s negotiations with rivals for Comcast-owned sports programming.

Kesmai Corporation, et al. v. America Online, Inc., et al. Constantine Cannon represented Kesmai, a developer of on-line video games, in this monopolization case against America Online. Kesmai alleged that AOL used its monopoly position in the Internet service provider market to gain an unfair competitive advantage and monopoly power in the multi-player on-line games market. Constantine Cannon secured a favorable settlement for Kesmai on the eve of trial.

The Acquisition of Chris-Craft Industries, Inc. by The News Corporation, Ltd. Constantine Cannon successfully represented News Corp. in connection with the Department of Justice's review of News Corp.'s \$5 billion acquisition of Chris-Craft. In this transaction, News Corp. acquired VHF television stations in the cities of New York, Los Angeles and Phoenix. The firm convinced the Department to terminate its review of this transaction before the time period prescribed by the Hart-Scott-Rodino rules expired and to withdraw the Second Requests issued to the parties.

The Merger of TV Guide, Inc. with The Gemstar Corporation. Constantine Cannon successfully represented News Corp. in connection with the Department of Justice's review of this transaction in which News Corp. received a 21% equity interest in the merged entity. The firm convinced the Department to narrow its Second Request, and to clear the deal, which the firm successfully argued would not substantially lessen competition in an alleged market for interactive programming guides.

The Acquisition of Heritage Media Corporation by The News Corporation, Ltd. Constantine Cannon successfully represented News Corp. in connection with the Department of Justice's review of News Corp.'s acquisition of Heritage Media. The firm convinced the Department that News Corp.'s acquisition of Heritage Media, and in particular its ActMedia subsidiary, did not pose a threat to competition because the in-store marketing services provided by News Corp.'s News America Marketing subsidiary and ActMedia competed in the broader marketing services market.

The Acquisition of Fox Family Worldwide, Inc. by The Walt Disney Company. Constantine Cannon successfully represented News Corp. in connection with the \$5 billion sale of Fox Family Worldwide to Walt Disney. The firm, along with Disney's counsel and foreign counsel in Argentina, Brazil, Canada, Columbia, and Mexico, determined whether filings were necessary under the various pre-merger notification laws of the many jurisdictions implicated in the deal.

Lexmark International Inc. v. Static Control Components. Constantine Cannon represents Static Control Components, a supplier of aftermarket replacement parts, in a complex case involving copyright, patent, and antitrust law. In the first appeal, our attorneys successfully reversed a preliminary injunction against our client, in what has become a leading case under the Digital Millennium Copyright Act. At trial, we obtained summary judgment on all copyright issues, and litigated successfully against Lexmark's claims based on inducement of patent infringement. In the second appeal, our attorneys successfully upheld the jury verdict, and reversed the district court's dismissal of Static Control's federal and state unfair competition claims and state antitrust claims. The Supreme Court is considering Lexmark's petition for certiorari.