



Michael R. Murphy

Partner

Boston
+1.617.261.3132

michael.r.murphy@klgates.com

OVERVIEW

Michael Murphy focuses his practice on consulting and representing clients on issues related to antitrust and competition, product pricing and distribution, advertising and marketing, intellectual property, and e-commerce. Additionally, Michael represents clients in complex business litigation.

Michael advises product manufacturers on the design and implementation of distribution and resale price maintenance strategies focusing on removing unauthorized Internet resellers and limiting online price erosion. Michael has developed customized distribution strategies and legal foundations for product manufacturers in numerous regions of the world and across many product verticals. Further, Michael and his team assist clients in developing and enforcing gray market and counterfeit suppression strategies. He counsels clients on distribution and pricing strategies in North America, Europe, Asia, and Australia.

Michael consults and litigates on behalf of clients regarding a range of antitrust/competition issues, including monopolization issues under the Sherman Act and pricing issues under the Robinson-Patman Act.

Additionally, Michael has experience assisting clients with the procurement and negotiation of contracts with governmental agencies on the federal, state and local levels.

Besides antitrust litigation, Michael's litigation experience includes disputes regarding complex business issues, real estate, and intellectual property.

PROFESSIONAL BACKGROUND

Prior to joining K&L Gates, Michael was a partner at a national law firm. He previously clerked for the Honorable Judge Louis R. Meloni in the New Jersey Superior Court.

ACHIEVEMENTS

- Named Top Antitrust Lawyers by Boston Magazine (2023)
- Named to Massachusetts Rising Stars list for Antitrust Litigation (2016-2020)

PROFESSIONAL / CIVIC ACTIVITIES

- Co-Founder of Cradles to Crayons Emerging Leaders Council
- Previous board member of the Teach for America Greater Boston Alumni Advisory Board
- Has served on numerous campaign and finance committees including those of Senator John F. Kerry and Representative Michael E. Capuano
- IADC Trial Academy Alumni (International Association of Defense Counsel Trial Academy)
- Teach for America corps member

SPEAKING ENGAGEMENTS

- Speaker, "Protecting Your Cosmetics Empire: Exploring IP Protections and Anti-Counterfeiting Strategies," American Conference Institute, 29 September 2023
- Speaker, "What's Permitted & What's Not: Go-To-Market Strategies in the UK and Europe," Trackstreet Webinar, 4 August 2022
- Speaker, "Robinson-Patman Act Primer: Prohibitions and Practical Applications," American Bar Association, Section of Antitrust Law, 15 December 2021
- Speaker, "Enforcing on Unauthorized Sellers," Trackstreet Webinar, 6 October 2021
- Speaker, "How Strong is Your Foundation? Authorized Resellers & Pricing Programs," Trackstreet Webinar, 9 June 2021
- Speaker, "Authorized Reseller Agreements 101," Saving Lifestyle Brands Podcast, 24 March 2021
- Speaker, "Building the Proper Legal Foundation to Gain Control of eCommerce Sales" and "Expert Panel Roundtable," AMZ Atlas Summit, 11 February 2021
- Speaker, "Brand Protection in a Digital World," Chicago Bar Association, Intellectual Property Committee, 25 September 2020
- Speaker, "E-commerce & Amazon Marketplace in the time of Covid-19," Howell & Associate Webinar, 5 May 2020
- Speaker, "Keeping Your E-Commerce Channel Safe," Trackstreet Webinar, 21 April 2020
- Speaker, "The Intersection of Business, Government and Current Events," 22nd Annual Sawyer Business School Honors Networking Event, 4 March 2020
- Speaker, "The First Pillar of a Successful Pricing Policy," PriceSpider Podcast, 4 March 2020
- Speaker, "Legal Panel Discussion: Join some of the brightest legal minds in MAP as they address challenges and solutions facing MAP today," ORIS Summit by PriceSpider, 17 October 2019

- Speaker, “4 Pillars of Online Protection,” ASD Market Week, July 30, 2019
- Speaker, 21st Anti-Counterfeiting & Brand Protection Conference, 28-30 January 2019
- Speaker, “Managing Marketplaces- The Legal Questions,” ORIS Intelligence Summit, 4 October 2018

Additionally, Michael regularly speaks at the national sales conferences of product manufacturers on a variety of topics related to brand protection.

EDUCATION

- J.D., Suffolk University Law School, 2007 (*cum laude*; *member of the Moot Court Honor Board*; *Journal of Trial and Appellate Advocacy*)
- B.A., Dickinson College, 2002

ADMISSIONS

- Bar of Massachusetts
- Bar of New Jersey
- Bar of Pennsylvania

THOUGHT LEADERSHIP POWERED BY HUB

- 20 September 2023, Ninth Circuit Finds That Costco Is Not Just a Retailer, but Actively Competes With Wholesalers With Respect to Robinson-Patman Price Discrimination Claims
- 16 June 2023, Rum and Coke: The FTC Targets Soft Drinks and Alcohol in the Revival of Robinson-Patman Act Enforcement- What's Next?
- 30 March 2023, Transparency Is The Best Policy: The INFORM Consumers Act Offers Verified Unauthorized Third-Party Seller Information
- 8 August 2022, ITC Proceedings: An Alternative to Knock Out Knockoffs
- 13 July 2022, The FTC's "New" Tool: Greater Enforcement of the Robinson-Patman Act
- 1 February 2022, Recent Second Circuit 1-800 Contacts Decision Helps Brands See More Clearly How to Pay Less per Click
- 17 May 2021, Resale Price Maintenance May Carry More Risk Than Originally Thought in Canada, Eh?
- 1 March 2021, COVID-19 Continues to Leave Commercial Landlords and Tenants Frustrated
- 6 May 2020, COVID-19: Steps Product Manufacturers Can Take to Protect Their Brand as At-Risk Retailers Face Bankruptcy

- 4 May 2020, Supreme Court Raises the Stakes Against Unauthorized Resellers: Willfulness No Longer Required for Manufacturers to Obtain Profits in Trademark Cases
- 17 February 2020, Russian Competition Regulators, Mount Up: Russian Authorities Crack Down on Anti-Competitive Agreements With Uptick in Criminal Liability for Antitrust Violations
- 25 July 2019, Got An Antitrust Compliance Program?
- 15 July 2019, China's High Court Maintains the Status Quo for Now, but the Future for Resale Price Maintenance in China Is Optimistic for Product Manufacturers
- 7 June 2019, The Pitfalls of Price Monitoring in the EU
- 3 June 2019, Unilateral Policies Are 99 Years Old And Still the Safest And Most Effective Form of Resale Price Maintenance
- 26 April 2019, Manufacturers Need to Mitigate Risk of Price Bias Claims
- 14 February 2019, "It's Authorization, Stupid": An Authorized Reseller Program, Not a MAP, Is Your Best Weapon to Fight Unauthorized Internet Resellers
- 11 October 2018, Yutai Seeks Clarity from Chinese High Court on Resale Price Maintenance Divergence
- 7 August 2018, Continued Antitrust Enforcement Against Non-Compliant Manufacturers in Europe: Significant Penalties Imposed for Fixing Resale Prices
- July 2018, November 2018: China's Inaugural Import Expo
- 7 June 2018, Resale Price Maintenance in China: One Country, Two Systems
- 24 May 2018, Formerly named "Competition Commission of Singapore" Takes on a New Name in Light of Expanded Consumer Protection Role
- 8 May 2018, Distribution Strategies in Hong Kong: A New, but Familiar Landscape for Product Manufacturers
- 2 May 2018, DOJ Makes Early-Decision to Take Elite Colleges and Universities to School
- 17 April 2018, Optimizing Your Brand Equity and Distribution Strategy
- 4 April 2018, Putting China on the MAP
- 12 March 2018, Employers Beware: Time for a New "A-Poach"
- 14 February 2018, Disfavored Retailers Turning Up the Volume on Robinson-Patman Litigation
- 8 March 2017, Supreme Court Declines to Hear Seventh Circuit Case Holding That Bulk Packaging Does Not Constitute a Promotional Service Under the Robinson-Patman Act
- 28 March 2016, Second Circuit Affirms Dismissal of Sherman Act Claims Due to Failure to Allege a Plausible Geographic Market

- 21 March 2016, No Rule of Reason Here: State AG Reminds Manufacturers That Minimum Retail Price Agreements Are Illegal Per Se in Maryland with Latest Suit
- 3 March 2016, 7th Circuit Not Convinced That Bulk Packaging Constitutes a Promotional Service Under The Robinson-Patman Act

OTHER PUBLICATIONS

- “Businesses Should Prepare For FTC Use Of Robinson-Patman,” *Law360*, 20 July 2022
- “Resale Price Maintenance Policies A Century After Colgate,” *Law360*, 30 May 2019
- “Manufacturers Need To Mitigate Risk Of Price Bias Claims,” *Law360*, 12 April 2019
- “Resale Price Maintenance in China: One Country, Two Systems,” *LexisNexis*, 19 June 2018
- “Disfavored Retailers Turn Up Volume On Robinson-Patman,” *Law360*, 20 February 2018
- “What To Expect From 7th Circ. In Robinson-Patman Case,” *Law360*, 16 March 2016
- “What is the Kennedy Act, And What Can it Do for Me?” *Cradles to Crayons Blog* post, January 2010
- “The Race for 2011 Appropriations: On Your EARmarks, Get Set, Go!,” *ChannelWorks’ “ChannelWise,”* December 2009
- “Finally...Stimulus Money for Auto Parts Industry,” *PWA Newsline*, a publication of the Performance Warehouse Association and Performance Automotive Retailer, Vol. 39 Issue 3, 2009

NEWS & EVENTS

- 7 November 2023, Luxury Law Summit New York Workshop: Perfecting Your Brand's Go-To-Market Strategy for Europe, Hosted by The Luxury Law Alliance
- 29 September 2023, Protecting Your Cosmetics Empire: Exploring IP Protections and Anti-Counterfeiting Strategies, Hosted by American Conference Institute
- 30 July 2015, K&L Gates Strengthens Investment Management Practice with Boston Lawyer Addition

AREAS OF FOCUS

- Antitrust, Competition, and Trade Regulation
- Commercial Disputes
- IP Litigation

INDUSTRIES

- Advertising and Marketing
- Consumer Products
- Luxury Products and Fashion

REPRESENTATIVE EXPERIENCE

Antitrust Litigation

- *Security Data Supply, LLC, et al. v. Nortek Security and Control, LLC, et al.*, Texas Federal District Court (2019): represented a global leader in smart connected systems and devices for residential smart homes in civil antitrust litigation alleging claims of price discrimination under the Robinson-Patman Act, tortious interference, corporate bribery, and unfair competition. Case resulted in a confidential settlement.
- *Savant Systems v. Crestron Electronics*, Massachusetts Federal District Court (2014): represented premium home automation systems manufacturer in civil antitrust litigation involving monopolization claims under the Sherman Act. Case resulted in a confidential settlement.
- *GN Netcom, Inc. v. Plantronics, Inc.*, 2016 WL 3792833, (D. Del. July 12, 2016): Obtained \$5 million sanction and adverse inference for defendant's spoliation of evidence.
- *Roxul USA, Inc. v. Armstrong Worldwide Industries*, Delaware Federal District Court. Defeated motion to dismiss and motion for summary judgment in lawsuit alleging improper monopolization of acoustical ceiling tile marketplace. Case resulted in a Confidential Settlement.