

**WILSON  
SONSINI**

## **Federal Trade Commission**



### **HIGHLIGHTS**

#### **A Team Led by Former Senior Regulatory Officials From the FTC and Other Agencies**

Wilson Sonsini's team includes former members of the FTC and other regulatory agencies.

### **OVERVIEW**

As Wilson Sonsini's clients encounter regulatory hurdles involving the Federal Trade Commission, they often consult with our team of attorneys who have extensive experience advising companies on FTC-related matters. The team includes former high-level FTC officials; one attorney previously served as director of the FTC's Bureau of Consumer Protection, while another was formerly director of the FTC's Bureau of Competition.

Our FTC experience stretches across several practice disciplines, but in line with recent regulatory trends, the firm has been particularly active—and successful—in the following areas:

- Antitrust (M&A-related HSR reviews, anticompetition clearance, and anticompetitive practices)
- Consumer regulatory and privacy (including FTC investigations and inquiries)
- False or deceptive advertising claims

### **Antitrust**

#### **Merger-Related Hart-Scott-Rodino Reviews and Anticompetition Clearance**

Wilson Sonsini has a proven record of helping clients obtain FTC clearance as they pursue M&A or other transactions requiring agency approval.

Few if any other law firms in the U.S. can match our success in obtaining favorable outcomes before the FTC in connection with technology-related M&A transactions. To date, we successfully have defended more than 1,000 Hart-Scott-Rodino-reportable M&A transactions before the FTC and DOJ, and none of our clients has ever abandoned a merger or acquisition or had it blocked as a result of action by either agency.

With a global network of offices in the U.S., the European Union, and China, our team is well equipped to handle complex multi-jurisdictional mergers that entail FTC review. For example, Wilson Sonsini represented Seagate Technology in its \$1.4 billion acquisition of the hard-disk-drive (HDD) business of Samsung Electronics, a transaction that combined two leading HDD manufacturers. The deal, which had global implications, was reviewed by more than 12 jurisdictions and received significant scrutiny from agencies in numerous geographies, including the FTC. Wilson Sonsini's team won a 2012 "Matter of the Year" award from *Global Competition Review* for our representation of Seagate in the matter.

Wilson Sonsini has successfully represented clients before the FTC in connection with M&A transactions for several reasons. First, our attorneys communicate clearly and convincingly with the FTC as to what is driving our clients' M&A interests, as well as the relative

marketplace impact, because we have a thorough understanding of their businesses, growth strategies, and markets. Such explanations are often a key factor in obtaining clearance from the FTC.

Second, attorneys in Wilson Sonsini's M&A and litigation practices collaborate on how to best demonstrate the dynamics of a deal to the FTC and other agencies. Paired with our comprehensive understanding of each client's business, our teamwork helps clients position themselves in the most advantageous way possible to secure approval.

The results of our efforts are best illustrated by the fact that Wilson Sonsini's clients have completed some of the most significant technology and non-technology mergers and acquisitions since 1999. Among the technology industry leaders Wilson Sonsini has represented successfully before the FTC in connection with M&A transactions are Google, Seagate, Brocade, Micron, Autodesk, Salesforce.com, and Sun Microsystems. The firm has also represented other industry leaders before the FTC, including The McClatchy Company (news media), University of Pittsburgh Medical Center (healthcare), and The Coca-Cola Company (food and beverage).

For more information about the firm's FTC experience in conjunction with mergers, including a representative list of transactions, please see our [merger clearance](#) page.

## Anticompetitive Business Practices

The firm also represents clients in conjunction with FTC inquiries into anticompetitive business practices.

Our attorneys have assisted companies responding to anticompetitive allegations that include competitor-related claims (such as price fixing, market division, and claims made by trade associations or standards-setting bodies); supply chain-related claims (such as exclusive dealing or requirements contracts); and single-firm conduct (such as monopolization, supply or purchase agreements, predatory pricing, or product tying).

The firm also has experience representing clients when inquiries concern allegations of patent or copyright misuse. In fact, Wilson Sonsini successfully defended VISX against FTC claims of unlawful monopolization in one of the few patent abuse cases litigated through trial.

Notably, the firm successfully represented Google in connection with the FTC's highly publicized, 19-month investigation into a number of the company's business practices, which ended with the five FTC commissioners unanimously voting that the company's handling of its search results had not violated U.S. antitrust laws on any grounds. The outcome was the lead story in the *The New York Times* and *The Wall Street Journal* the following day.

## Consumer Regulatory and Privacy

While the FTC's Bureau of Consumer Protection seeks to protect consumers against unfair or deceptive practices—focusing on areas such as privacy, identity protection, advertising, and telemarketing—the firm seeks to insulate clients from liability in these areas through proactive legal counsel and litigation. Wilson Sonsini's well-established consumer regulatory and privacy team includes the former director of the FTC's Bureau of Consumer Protection.

## Advisory Services

Our team advises companies on all aspects of U.S. and international privacy and data security laws. For example, the firm's attorneys help clients develop privacy and security policies, implement compliance programs, and comply with federal anti-spam legislation. They also advise businesses on strategies related to advertising and marketing practices and consumer protection.

## FTC Investigations, Enforcement Actions, and Litigation

If necessary, the firm represents clients involved in FTC investigations, enforcement actions, and related litigation often triggered by high-profile privacy incidents, novel business practices, and data breaches.

Wilson Sonsini's experience with FTC investigations includes representing clients during all inquiry phases, from the initial stages when parties receive subpoenas or civil investigative demands (CIDs) to the latter stages, after parties have cooperated and are seeking to complete an inquiry. For example, the firm has represented clients during FTC inquiries into business practices, the use of consumer data, and advertising and marketing efforts.

The firm also represents clients with respect to FTC enforcement actions, including injunctive relieve proceedings, administrative cease and desist orders, civil penalties, or judicially ordered redress for violations or improper conduct.

In addition, Wilson Sonsini represents clients involved in litigation against the FTC, once the agency files a complaint alleging a particular law has been or is being violated. The firm's attorneys have litigated cases involving, for example, alleged Do Not Call violations, telemarketing sales calls with recorded messages, and other privacy-related disputes. The firm also has represented clients facing claims of false or deceptive advertising, as set forth below.

The firm's success representing clients in FTC-related matters is one of the reasons Wilson Sonsini's privacy and data protection practice has twice been named the "Privacy & Consumer Protection Group of the Year" by *Law360*.

For more information about the firm's privacy and data protection experience, including lists of representative FTC matters, please see our [practice area summary](#).

## **False or Deceptive Advertising Claims**

The FTC's Division of Advertising Practices lists several areas as enforcement priorities, including efforts to monitor internet marketing practices, new advertising techniques and media, and other marketing and promotional efforts aimed at different segments of the economy.

Meanwhile, Wilson Sonsini represents B2B and B2C clients that rely on innovative, progressive advertising and marketing messages and methods to compete successfully in the marketplace. If the FTC questions the veracity of advertising or promotional claims used by our client, the firm works with the FTC to resolve the matter quickly and efficiently so the client can continue to conduct its business.

The firm's experience includes addressing false or deceptive advertising claims related to, for example, performance specifications, product features, pricing, rebates, sweepstakes, and warranties. The firm also helps clients avoid FTC advertising entanglements by reviewing ad copy, marketing and promotional campaigns, and other advertising elements prior to publication.