

REBECCA KIRK FAIR
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Ms. Kirk Fair has conducted economic analysis and managed case teams in support of academic experts in a broad range of cases, including intellectual property, false advertising, tax, class certification, and major antitrust litigation. She has also supported the FTC and parties in a variety of merger investigations. Ms. Kirk Fair has supported academic experts in prominent antitrust cases involving allegations of multinational and domestic cartels in the technology, consumer products, and finance industries, as well as allegations of monopolization and price fixing in both the financial services and IT industries. In particular, she has assisted with quantitative analyses and market research examining the consistency of plaintiffs' claims in the defense of multiple class certification matters in the financial services industry for payment card clients and several major brokerage houses. In *Discover v. MasterCard* and *American Express v. Visa, MasterCard, and Issuing Banks*, she oversaw multiple analyses in support of experts assessing damages and market equilibrium.

Ms. Kirk Fair has extensive experience in the development, administration, and analysis of surveys in antitrust, false advertising, and intellectual property matters, as well as merger reviews and strategy cases. She has supported the design and implementation of online, mall-intercept, and telephone surveys using a variety of methodologies, including conjoint and experimental designs. She has also served as an expert witness, testifying in arbitration, deposition, and at trial in matters involving the design and implementation of consumer surveys, the evaluation of plaintiffs' surveys, and statistical sampling and analyses. In addition, she has served as an expert witness in matters involving corporate valuation, patent infringement (analyzing both lost profits and reasonable royalty damages), breach of contract damages, and trademarks. Ms. Kirk Fair has supported academic experts in undertaking analyses of and surveys related to consumer perception, feature value, and marketing procedures in connection with IP and antitrust disputes, as well as fraudulent claims suits and trademark matters. Her work has been used to support and critique damages models, and to provide insights into the role of consumer choice in market definition. She has been invited to speak in front of the American Bar Association, the New York State Bar Association, and the Canadian Bar Association on survey, consumer protection, and competition issues. A frequently published author, Ms. Kirk Fair recently coauthored a chapter on survey methodologies for estimating damages, "Singleton v. Fifth Generation, Inc.," in FDLI's *Top Food and Drug Cases, 2017, & Cases to Watch, 2018*, and coauthored the article "The Tyranny of Market Shares: Incorporating Survey-based Evidence into Merger Analysis" in *Corporate Disputes*.

SELECTED CONSULTING EXPERIENCE

Merger Analyses and Antitrust Litigation

- **Large price-fixing cases in IT manufacturing industries**
Assisted in quantitative analysis and industry research to evaluate competition, pricing, and outputs in connection with two separate international price-fixing investigations in IT manufacturing industries.

- ***Large price-fixing cases in various sectors of the financial service industry***
Assisted in quantitative analysis and market research to examine consistency of plaintiffs in multiple class certification matters.
- ***WEX acquisition of EFS***
Supported both parties through the second request and the FTC's inquiry into the potential unilateral and coordinated effects of the merger of two of the country's largest fleet card companies. The transaction was consummated.
- ***GO Computer v. Microsoft***
Supported Professor Catherine Tucker of MIT in an analysis of competition amongst operating systems and computing platforms.
- ***Zimmer's Acquisition of Biomet***
Supported Biomet in its second request compliance and an analysis of product comparability, substitution rates, and customer loyalty using transaction and market data.
- ***Archipelago/NYSE Merger***
Supported Professor Robert Pindyck of MIT in his economic analysis on behalf of the parties, related to ease of entry, order internalization, and technological advancements. The transaction was consummated.
- ***Microsoft litigations in various forums***
Economic analysis on behalf of Microsoft in numerous competitor and consumer litigations on issues of competition, pricing, and damages. Supported survey design and research related to server software. Developed and critiqued damages models related to computer security, software pricing, and product development.

Class Certification Litigation

- ***Dahl, et al. v. Kohlberg Kravis Roberts & Co., et al.***
Worked with the JDG in support of numerous experts on issues of class certification and damages for group and individual private equity firms in matter alleging collusion.
- ***Financial Exchange Cartel Litigation***
Supported multiple experts on issues of class certification, marketplace analyses, and damages models for the defendant in a matter alleging collusion related to a financial instrument exchange platform.
- ***Air Cargo Litigations***
Evaluated industry dynamics, transaction data, and damages exposure for several Air Cargo defendants, including an evaluation of impact of plea agreements. Marketplace analysis included comparison of pricing patterns in areas covered and excluded from plea agreements.
- ***Antitrust Litigation in the Transportation Sector***
Casework included assisting with settlement negotiations and developing affirmative analyses in connection with ongoing class certification proceedings, on behalf of the defendants.

- ***Auto Parts Litigation***
Supported affirmative and rebuttal analyses for an indirect purchaser class action in an auto filters cartel case. Analyzed wholesale and retail transaction data, evaluated pass-through, and calculated firm and product profitability.
- ***Light Cigarettes Marketing Litigations***
Worked with plaintiffs in class action lawsuits in California, Massachusetts, and Missouri filed against the makers of “light” cigarettes. Supported marketing expert Joel Steckel to conduct conjoint analyses of consumer preference of light tobacco and nicotine in connection with a damages analysis.
- ***MasterCard Litigations***
Assisted in economic analysis on behalf of MasterCard in government and consumer litigations, including several class actions. Supported design and analysis of consumer survey regarding the use of various payment methods. Supported counsel in all phases of trial, including the development of direct testimony, trial demonstratives, and cross-examination questions.

Survey-related Litigation

- ***Large patent infringement suits in online retail industry***
Assisted in the design, implementation, and analysis of a survey to demonstrate that patented technologies provided substantial value to online retailers. In a similar ongoing matter, demonstrated the consumer impact of a copyrighted feature that provides functionality to a consumer electronics product.
- ***Commercial litigation and damages case in online retail industry***
Assisted in the assessment of the impact on consumer purchase behavior and price recall of allegedly misleading measures, including advertising language, in a commercial litigation and damages case. Supported field experiments, lab experiments, and analysis to assess consumer interpretation of comparison pricing language.
- ***Antitrust and intellectual property litigations on behalf of Microsoft***
Assisted Microsoft in various IP and antitrust matters in the assessment of the impact on consumer behavior, product adoptions, and functionality usage. Matters involved desktop media, browser, office productivity, and security software, as well as server software. Supported lab experiments, qualitative interviews, and web-scraping studies to assess consumer behavior and usage amongst end-customers and IT professionals.
- ***Trademark infringement matter of athletic apparel company***
Supported marketing expert Joel Steckel in a trademark infringement case in which an athletic apparel company claimed that a sports drink maker infringed on its trademark and diluted its brand.
- ***Trademark dispute in music services***
Developed, designed, and launched a pilot study in a trademark dispute to evaluate respondent perception by customer segment.

- ***Trademark infringement matter of a candy company***
Supported marketing expert Joel Steckel in a trademark infringement case in front of the TTAB in which a candy company was trying to bar entry of a foreign competitor that had infringed on its trademark and may have diluted its brand.
- ***Trademark infringement matter between two apparel companies***
Supported marketing expert Joel Steckel in designing and implementing a reverse confusion survey in a trademark infringement case in which an apparel company claimed that an athletic company infringed on its design mark.
- ***Antitrust case in the credit card industry***
Supported marketing expert John Hauser in rebutting an opposing expert's survey by showing that small methodological improvements to the original survey lead to substantial differences in results, in a case involving credit card payment procedures.
- ***Fox Broadcasting Company et al. v. DISH Network LLC et al.***
Supported marketing expert John Hauser in designing and implementing two surveys pertaining to use of television services, as well as in analyzing an array of industry data. After more than two years of litigation, a California federal judge found that Analysis Group client DISH's Hopper DVR does not infringe Fox's copyrights.
- ***Berlex Laboratories, Inc. v. Biogen, Inc.***
Supported expert witness in the determination of a reasonable royalty-related damages claim in a patent infringement case in the pharmaceutical industry. Assisted in the design and analysis of a market research survey of multiple sclerosis patients for use in damages model. (United States District Court, District of Massachusetts)
- ***Trademark infringement matter in the food industry***
Supported marketing expert Joel Steckel in designing a forward confusion and two reverse confusion surveys and implementing the forward confusion survey in a trademark infringement case in which an author / speaker claimed that the title of his book was inappropriately used in a TV commercial of a packaged food product.
- ***Confusion matter in the entertainment industry***
Supported marketing expert Joel Steckel in a trademark infringement case in which a TV company used a name for its show (and a company featured in the show) that was similar to the name of an existing company; assisted with design of forward and reverse confusion surveys.

Intellectual Property and Commercial Litigation

- ***MBIA Insurance v. Credit Suisse Securities***
Supported expert witness Antoinette Schoar in a rebuttal report of Joseph Stiglitz, evaluating the relationship between economic and contractual incentives in mortgage-backed securities. Supported expert witness Arnold Barnett in a rebuttal report, evaluating statistical relationship between a sample of loans on prediction of overall loan performance.

- ***Front-Loading Washers***
Supported conjoint study and economic analysis in support of multiple damages analyses, in product defect litigations against several manufacturers of front-loading washing machines. (Multiple jurisdictions)
- ***T-Netix, Inc. v. MCI WorldCom Communications, Inc. and Global Tel*Link Corp.***
Supported expert witness in all aspects of expert report preparation and deposition testimony in the estimation of lost profits and reasonable royalty damages from alleged infringement of patents related to prison phone systems. (United States District Court, Eastern District of Texas, Marshall Division)
- ***Burst.com v. Microsoft Corp.***
Assisted in an analysis of both patent and trade secrets damages and antitrust damages in a case involving software used for streaming media. Responded to plaintiff's claim of lost profits damages and unjust enrichment arising from the misappropriation of trade secrets. (United States District Court, District of Maryland)
- ***Gary Kosseff v. James Ciocia et al.***
Supported expert witness in the determination of fair market value of assets sold in a private transaction. Assisted expert in assessment and valuation of comparable companies and rebuttal testimony. (The Court of Chancery of the State of Delaware in and for New Castle County)
- ***Adelson, et al., v. Adelson***
Assisted in the valuation of a family business involving COMDEX. Assisted expert and counsel in deposition and trial testimony. (Massachusetts Superior Court, Middlesex County)
- ***KX Industries, L.P. and Koslow Technologies Corporation v. Culligan Water Technologies, Inc., and Plymouth Products Inc.***
Assisted expert in all aspects of report preparation, deposition preparation, and trial preparation in the estimation of damages stemming from lost profits, royalties, and price erosion claims in patent infringement claim pertaining to water filtration products. (United States District Court, District of Delaware)
- ***Plastics Research Corporation, Inc. v. Brite Millwork, Inc.***
Assisted in the development of a damages model to calculate lost profits, reasonable royalty, and price erosion damages from alleged infringement of a patent related to injection molded lattice products. (United States District Court, Eastern District of Michigan, Southern Division)
- ***Molten Metal Equipment Innovation, Inc. v. Metallics***
Supported expert witness in the determination of lost profits, reasonable royalty, and prejudgment interest covering a patent directed to submersible molten metal pumps. (United States District Court, Northern District of Ohio)
- ***Fonar Corporation v. Magnetic Resonance Plus, Inc.***
Supported expert witness in a product tying evaluation of the imaging market to assess the competitive nature of service contracts. (United States District Court, Southern District of New York)

Transfer Pricing Litigation

- *Glaxo Americas, et al. v. Internal Revenue Service*
Supported expert in econometric analysis and evaluation of pharmaceutical marketing in the pharmaceutical industry. Case settled. (United States Tax Court)
- *AstraZeneca, et al. v. Her Majesty's Revenue and Customs*
Supported consulting expert team on pharmaceutical valuation and licensing issues. Case settled. (United States Tax Court)

SELECTED PRESENTATIONS AND SPEAKING ENGAGEMENTS

“Fall 2018 iLead Speaker Series: Analysis Group,” MIT Sloan School of Management and the MIT Leadership Center, September 7, 2018

“Antitrust in the Amazon World,” American Bar Association webinar, May 31, 2018

“Practical Issues in Counseling at the Intersection of IP and Antitrust,” New York State Bar Association Antitrust Law Section Meeting, January 25, 2018

“Legal Challenges to State Laws Prohibiting Surcharges on Credit Card Transactions: Implications for the Industry,” American Bar Association, July 14, 2016

“The Use of Survey Evidence in Class Litigation,” California Bar Association, May 25, 2016

“The Next Frontiers: Social Media and Other Cutting Edge Issues in Advertising and Marketing,” Canadian Bar Association Competition Law Fall Conference, October 2, 2015

“Is False Advertising Anticompetitive,” American Bar Association Antitrust Section Spring Meeting, Washington DC, April 17, 2015

“Antitrust Enforcement and the Bazaarvoice Case,” New York State Bar Association Antitrust Law Section panel, May 21, 2014

“Branding & Brands in Law, Accounting & Marketing,” The Kenan Institute, University of North Carolina, April 12, 2012

“Reverse Payments – Balancing IP and Antitrust Concerns,” Boston Bar Association, May 20, 2009

Discussion and guided case study analysis on strategic planning and financial analysis with an emphasis on the use of historical financial data in monitoring a public company, DirectWomen Board Institute, February 22, 2008

“Survey Analysis Report,” First Annual Business Technology Outlook, North Dallas Chamber of Commerce, October 24, 2007

“Patent Holding Company Panel,” Streaming Media East Show, New York City, May 15, 2007

“Innovative Application of Economic Methods,” Analysis Group seminar on patent damages, March 2007

“Data & Discovery – The Economist’s Perspective,” Analysis Group seminar, May 10, 2005

PUBLICATIONS

“United States – E-commerce Economics: Market Power and Enforcement in Vertical Markets,” with Nikita Piankov and Emmanuel Frot, chapter in *GCR Insights: E-Commerce Competition Enforcement Guide*, ed. Claire Jeffs, January 2019.

“The Ability to Achieve Lost Sales as a Consideration in Damages Analyses under Different Legal Frameworks,” with Aaron Yeater, *American Bar Association Section of Intellectual Property Law, Landslide*, Vol. 11 No. 2, November/December 2018.

“Trademark Confusion And The Confusing Eveready Survey,” with Stephen Cacciola and Maggie Hadley, *Law360*, October 23, 2018.

“The Tyranny of Market Shares: Incorporating Survey-based Evidence into Merger Analysis,” with Rene Befurt and Emily Cotton, *Corporate Disputes*, July–September 2018.

“Singleton v. Fifth Generation, Inc.,” with August T. Horvath, chapter in *Top Food and Drug Cases, 2017, & Cases to Watch, 2018*, ed. August T. Horvath, May 2018.

“Avoiding bias: ensuring validity and admissibility of survey evidence in litigations,” with Laura O’Laughlin, chapter in *Handbook of Marketing Analytics*, eds. Natalie Mizik and Dominique M. Hanssens, April 2018.

“How To Interpret A Contract? Ask Those Who’d Sign It,” with Omri Ben-Shahar, Lior Strahilevitz, Duo Jiang, and Kristina Shampanier, *Law360*, March 21, 2018.

“Estimating Lost Sales Damages in Antitrust Cases: Can’t Count on Success,” with Aaron Yeater, *The Witness Chair*, Issue 71, Winter 2018.

“The Ability to Achieve Lost Sales as a Consideration in Damages Analyses,” with Aaron Yeater, chapter in *Lost Profits Damages: Principles, Methods, and Applications*, eds. Everett P. Harry, III and Jeffrey H. Kinrich, 2017.

“Managing Multiple Expert Witnesses: Best Practices and Pitfalls,” with Laura Comstock, Andrea Okie, and Carletta Wong, *American Bar Association Section of Litigation, The Woman Advocate*, August 17, 2017.

“Survey And Real-World Data: A Winning Combination,” with Peter Simon, Kristina Shampanier, and Riddhima Sharma, *Law360*, July 14, 2017.

“What Consumers Really Think About Reference Price Labels,” with Joel Steckel, Kristina Shampanier, Laura O’Laughlin, and Jesse Shea, *Law360*, March 21, 2017.

“Ensuring Validity and Admissibility of Consumer Surveys,” with Laura O’Laughlin, *American Bar Association Section of Litigation Consumer Litigation Newsletter*, Winter 2017.

“Antitrust Enforcement in Two-Sided Markets,” with Juliette Caminade, Federico Mantovanelli, and David Toniatti, *American Bar Association Section of Antitrust Law Economics Committee Newsletter*, Winter 2016.

“3 Questions to Ask When Using Surveys in Litigation,” with Laura O’Laughlin, *Law360*, May 15, 2015.

“Is It Worth Anything? Using Surveys in Intellectual Property Cases,” with Joel Steckel and Rene Befurt, *white paper*, 2013.

“Tools for Handling Mortgage-Based FCA Claims,” with David Mishol, *Law360*, September 26, 2012.

“Digital Media Patents for Profit,” with Dan Rayburn and Almudena Arcelus, *Streaming Media Magazine: Industry Sourcebook 2007*.

PROFESSIONAL AFFILIATIONS AND AWARDS

Affiliations

ABA (American Bar Association)

Section of Antitrust Law

Section of Intellectual Property Law

American Marketing Association (AMA)

Women’s Competition Network (WCN)

Awards

Who’s Who Legal 2018

Competition: Future Leaders – Economists

Consulting Experts: Future Leaders – Competition Economists

EDUCATION

M.B.A. Sloan School of Management, Massachusetts Institute of Technology, Cambridge, MA

B.A. Economics (with honors), Middlebury College, Middlebury, VT