

*Partner*

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**Practice Areas**

Antitrust & Trade Regulation

Biotechnology & Life Sciences

Class Action Defense & Multi-District Litigation

Corporate Compliance & White Collar Defense

Health Care

Intellectual Property

Venture Capital & Emerging Companies

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**Bar Admissions**

Louisiana, 1996

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**Education**

New York University School of Law, LL.M., 1994

Tulane University Law School, J.D., 1992

Claremont Colleges (Pitzer College), B.A., 1989

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Mark Cunningham is a partner in the firm's Business & Commercial Litigation Practice Group, and represents and counsels a diverse group of national and international companies in their day-to-day business operations and transactions, particularly in the areas of antitrust, export control, and regulatory compliance issues. He also maintains an active national trial and appellate practice, and regularly assists clients in responding to grand jury subpoenas, civil investigative demands, cease and desist orders, and other compulsory processes from international, federal, and state regulators, including the European Commission, the Justice Department, and the Federal Trade Commission.

Mr. Cunningham's recent significant engagements include serving as lead counsel for a software concern targeted by federal authorities for criminal and civil violations of export control laws, including the International Emergency Economic Powers Act and Iranian Transaction Regulations. Although the prosecution commenced with the surprise execution of search warrants by criminal investigators from three different federal agencies, the company successfully avoided criminal prosecution and resolved all civil claims, without any loss of its export privileges, in a universal settlement. He also recently defeated an application for temporary restraining order and preliminary injunction on behalf of an international concern allegedly engaged in an unlawful boycott, obtained a preliminary injunction against a software licensee pirating software on behalf of hacker syndicate located in Eastern Europe, and obtained a not-guilty verdict on behalf of a wrongfully accused juvenile facing a mandatory life sentence. Mr. Cunningham also regularly works in cooperation with law enforcement agencies, including the Federal Bureau of Investigation, in confidential investigations to obtain relief for clients harmed by the criminal acts of third parties. Mr. Cunningham served as the lead trial attorney or second chair in the cases that led to the following reported decisions:

- *Schafer v. State Farm and Casualty Co.*, 507 F.Supp.2d 587 (E.D. La. 2007) (class action antitrust litigation).
- *Funeral Consumers Alliance, Inc. v. Service Corp. International Inc.*, 2008 W.L. 7356272 (S.D. Tex. Nov. 2008).
- *Belle Chasse Automotive Parts v. Advanced Auto Parts*, 2009 WL 799760 (E.D. La. May 20, 2009) (security breach class action litigation).
- *Louisiana ex. rel. Caldwell v. Allstate Insurance Co.*, 536 F.3d 418 (5th Cir. 2008) (antitrust litigation).
- *Cunningham v. Offshore Specialty Fabrications, Inc.*, 543 F.Supp.2d. 614 (E.D. Tex. 2008) (RICO class action litigation).
- *Cordes & Co. Financial Services, Inc. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91 (2nd Cir. 2007) (antitrust class action litigation).
- *In re Issuer Plaintiff Initial Public Offering Antitrust Litigation*, 234 F.R.D. 67 (S.D.N.Y. 2006) (antitrust class action litigation).
- *Jama v. Gonzales*, 431 F.3d 230 (5th Cir. 2005) (immigration class action litigation).

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#### **Noteworthy**

- Named "New Orleans *Best Lawyers* Antitrust Law Lawyer of the Year" 2011
- Listed in *The Best Lawyers in America*® 2012 (Copyright 2011 by Woodward/White, Inc.) in the areas of Administrative/Regulatory Law, Antitrust Law, Bet-the-Company Litigation, Commercial Litigation, Litigation - Antitrust, and Litigation - Mergers & Acquisitions (listed annually since 2009)
- Treasurer, Louisiana State Bar Association (2010–2012)
- Secretary, Louisiana State Bar Association (2007–2009)
- Recipient of The *Pro Bono* Project Leadership Award (2009)
- Board of Governors, Louisiana State Bar Association (2007–2012)
- Recipient of The *Pro Bono* Project Distinguished Service Award (2007, 2008)

#### **Clerkships**

- U.S. District Judge Charles Schwartz, Jr., E.D. La.
- U.S. District Judge Sarah S. Vance, E.D. La.

### Law Review

- Senior Managing Editor, *Tulane Law Review* (1992)
  - Associate Member, *Tulane Law Review* (1991)
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### Presentations

- "How to Prepare Yourself and Your Expert"  
New Orleans Bar Association, Bench Bar Conference, 2011
  - CLE Instructor, "Business Torts in Louisiana"  
2005
  - Moderator, "Structuring and Counseling Special Purpose Consortia,  
Forums, and Alliances"  
2005
  - Moderator, "Hot Topics in Trade Association Law and Counseling"  
2004
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### Publications

- "The Honorable Sarah S. Vance"  
*Federal Bar Association Newsletter*, 2009
- "Merchant Portfolio Litigation Risks Management"  
*Transaction World Magazine*, September 2003
- "April Showers for VISA and MasterCard: A Legal Perspective of the  
VISA/MasterCard Settlement"  
*TransAction World Magazine*, July 2003
- "Lawyer Advertising Across State Lines: Should the Louisiana Supreme  
Court Act?"  
*Around the Bar*, Baton Rouge Bar Association, February 2003
- "Litigating Metatag Keyword Infringement Claims"  
*The IP Litigator*, May 1, 1998
- "Utilitarian Design Features and Antitrust Parallels: An Economic  
Approach to Understanding the Functionality Defense in Trademark  
Litigation"  
*18 Hastings Communications and Entertainment Law Journal* 469, 1996
- "A Complementary Existence: An Economic Assessment of the  
Trademark and Competition Law Interface in the European Economic  
Community"  
*10 Civil & European Law Forum* 1, 1995

- "Preliminary Injunctive Relief in Patent Litigation"  
*35 Journal of Law & Technology* 213, January 1, 1995
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## Memberships

### Teaching Appointments

- Adjunct Professor of Antitrust Law, Loyola University New Orleans College of Law (2001 to date)

### Professional Appointments

- American Bar Association
  - Vice Chair, Trade Associations Committee, Section of Antitrust Law (2002–2005)
  - Publisher/Editor, Trade Associations Committee Newsletter, *Information Exchange* (2003 to date)
  - Assistant Editor, *Antitrust Law Journal* (1998–2002)
- Louisiana State Bar Association
  - Treasurer (2010–2012)
  - Executive Committee (2007–2009)
  - Managing Editor, *Louisiana Bar Journal* (2007–2009)
  - Chair, Lawyer Advertising Committee (2000–2004)
  - Committee on the Profession (2007–2009)
  - Client Protection Fund Committee (1996–2002)
  - Editorial Board, *Louisiana Bar Journal* (1997–2003)

### Civic Appointments

- American Bar Foundation Fellow (2011 to date)
- Louisiana Center for Law & Civic Education
  - President (2011–2012)
  - Board of Directors (2009 to date)
- New Orleans Regional Leadership Institute (2009)
  - Board of Directors (2010 to date)
- The *Pro Bono* Project
  - Chairman (2009–2010)

- Board of Directors (2003–2010)
- Tulane European & Civil Law Forum
  - Board of Editors (1996 to date)
- WRBH Radio for the Blind and Print Handicapped
  - Chairman (2007)
  - Board of Directors (1998–2007)
- New Orleans Center for the Creative Arts (Board of Directors, 1998–2001)

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### **Court Admissions**

U.S. Supreme Court, 2002

5th Cir., 1996

E.D. Ark., 1999

W.D. Ark., 1999

D. Colo., 2002

C.D. Ill., 2011

E.D. La., 1996

M.D. La., 1996

W.D. La., 1996

