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Litigator of the Week: A Stratospheric Win For Trial Boutique BraunHagey Founder

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By Jenna Greene
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Our Litigator of the Week is Noah Hagey, co-founder of 20-lawyer litigation boutique BraunHagey & Borden, who prevailed in a David-and-Goliath antitrust battle where his client's survival hinged on the outcome.

After a five-week trial in U.S. District Court for the Northern District of California, a jury awarded Hagey's client Orion Telescopes & Binoculars $16.8 million in damages, which with trebling will top $50 million.

Orion alleged that a consortium of Chinese telescope manufacturers conspired to set prices and monopolize the market for consumer telescopes in the U.S. As one of the first cases to challenge vertical integration of dominant foreign manufacturers with prior American brands, the impact will go beyond those who gaze at the stars.

Lit Daily: Who is your client and what was at stake?

Noah Hagey: Our client is Optronic Technologies, better known to telescope and astronomy enthusiasts as Orion. It was one of the first companies to help bring telescopes into ordinary households back in the 1970s when its founder set up shop from his garage in Santa Cruz, California.

Today, Orion is the third most popular telescope brand in the U.S. and is owned by its employees, many of whom have worked for the company for over 20 years.

The case was an antitrust dispute, pitting Orion against the industry's dominant manufacturer, Ningbo Sunny and its subsidiaries, Sunny Optics and Meade Instruments. The jury found that defendants conspired and colluded with their competitors to monopolize the market for telescope manufacturing and to fix prices and allocate products.

Noah Hagey managing partner with BraunHagey & Borden.

For Orion, as I told the jury during closing, the stakes were dire. Either Orion would prevail and live to continue as the last independent telescope company in the U.S., or Orion would lose and go out of business.

On a more personal level, the employee-owners put their life savings into the business, all of which would have been lost if the verdict have gone differently. Now, at least with the jury's award and the Court's judgment of over $50 million, they have a chance of repairing their company.

To take a step back, can you give us a little background about you, your firm, and how you got involved in the case?

Sure. I began my career in New York litigating cases with amazing trial lawyers at a boutique called Christy & Viener. I later joined Quinn Emanuel in New York before launching BraunHagey & Borden in 2009 with my good friend Matt Borden.

Our firm is a litigation and transactional boutique with approximately 20 attorneys based in San Francisco and New York. This is our 10-year anniversary! All of our partners began their careers at larger institutional law firms in New York and San Francisco, and most of us clerked for federal or state judges.

Our litigation practice focuses on complex commercial disputes and bet-the-company litigation, as well as novel and "special situation" engagements for plaintiffs and defendants. For example, we currently serve as co-counsel for noteholders in the pending PG&E bankruptcy in California and represent dozens of defendants in products liability class actions around the country. We also represent hedge funds, cryptocurrency investors and private equity funds in complex industry disputes around the country.

This is our second straight eight-figure trial judgment this year. As part of this success, we are proud to be one of the few firms nationally that pays above "Big Law" market rates to our amazing associate colleagues.

One part of the practice we are particularly proud of is our impact litigation group. This brings pro bono and novel impact cases dedicated to serving the larger public good. Recent cases include representation of environmental groups in shutting down coal fired power plants and addressing the misuse of water resources, as well as our recent Ninth Circuit victory providing standing for abused nursing home residents to hold the state accountable to enforce laws designed to protect indigent nursing home residents.

What were Orion's primary allegations of anticompetitive misconduct?

There are many. Basically, we showed the jury that the defendants and their co-conspirators in China have operated as a cartel for almost two decades, controlling the manufacture, pricing and supply of telescopes into the U.S. (and worldwide).

Beginning in 2005, they also colluded to take over their competing U.S. telescope manufacturers, beginning with Celestron in 2005 and then Meade Instruments in 2013. We argued defendants' goal was to monopolize the market on both ends—both in the manufacture of telescopes and in the downstream distribution of brands sold to consumers.

To accomplish this, we presented evidence that the defendants misled regulators at the FTC, falsely representing that defendants' co-conspirators had no role in the challenged transactions. They also conspired over the years, including in brazen email threads, to "prevent conflict" and "divide" the astronomical market between them. Defendants also jointly retaliated and punished any competing brand or business that dared to object to their practices—which is what happened to Orion.

U.S. District Judge Edward Davila dismissed your original complaint, writing that "Plaintiff describes only conduct that harms it as a competitor, but not harm to competition itself." How did you respond?

We provided more detail in the amended complaint which explained (and described evidence) showing that the entire market and competition itself has been poisoned by defendants' actions, which included fixing prices and allocating products in violation of basic notions of fair play.

At trial, witnesses referred to that poisoning of the market as a "malaise" affecting industry participants. Defendants and their conspirators used that malaise to then acquire their competitors or drive them out of business.

Who was opposing counsel? As a boutique, how do you go up against a 700+ lawyer firm?

Opposing counsel was the co-head of Sheppard Mullin's antitrust practice and a team of antitrust litigators from the firm's Washington, D.C., Los Angeles and San Francisco offices. Frankly, they often appeared dismissive of the case and our team. But we have grown used to flying under the radar, even though we have been prevailing in high profile cases since inception.

You might say that underestimation is one of our strategic advantages … hopefully this award doesn't undermine that too much!

Who were the members of your team and what individual strengths did they bring to the representation?

A complex, five-week trial like this is not possible without a strong and cohesive team. My partner Matt Borden was unflappable and always ready with a fun

astronomy joke … and crossing a key defense witness.

Our associate Ron Fisher was a rock during trial, not only in drafting key trial briefs, raising evidentiary objections and taking several key witnesses. Our partner Jeff Theodore also was instrumental in helping prepare expert cross and in disqualifying one of Defendants' experts.

We also benefited from a superlative team of paralegals including Victoria Tong, Katie Kushnir and Laura Verga. Last, but not least, any trial of this duration and intensity requires the support of our families, who helped us recharge on weekends and off-days.

Antitrust cases rarely go to trial. What stopped this case from settling?

No comment! There are many things about how the defense oriented itself in this case, including as to potential settlement, that we still do not understand.

What was your overarching theme in presenting the case to the jury?

We kept it simple: the industry has been poisoned and Orion is the next victim; please don't let that happen.

It bears mentioning for those who don't know, the Northern District of California probably has the most sophisticated and diverse jury pool in the country. This can make things tricky for plaintiffs, but is something we relish. All but one of our jurors had an advanced degree and many of them had several. One was a nuclear scientist.

Did you make any unconventional strategic choices?

We put all of defendants' key witnesses on the stand before a single Orion witness testified to the jury.

Tell us about a high (or low) point at trial.

High point was seeing all of our clients (Orion's employee owners) in court during opening and closing, and the verdict on all counts was the ultimate high point.

The low point was dealing with timing allocation issues. Because of translation and evidentiary difficulties, we expended a substantial portion of our time on a single foreign witness. This made time allocation throughout the rest of the trial difficult to say the least.

There's a robust regime of federal antitrust enforcement, both in approving mergers and going after anti-competitive conduct. Did the feds drop the ball here? What does this case tell us about the importance of a private right of action for antitrust violations?

While most antitrust cases follow from federal enforcement, agency allocation also follows market size and the telescope industry ($150 -200 million) is small by comparison to other markets.

Yet even so, the FTC was very concerned about defendants' conduct, particularly regarding their acquisition of Meade. How did defendants get away with it? The evidence adduced at trial is that defendants and their representatives lied to the regulators. At some point, those misrepresentations should be addressed.

As for private rights of action in antitrust, they are as important as ever—particularly in light of the growing trend of vertical integration between dominant suppliers and the brands they sell to.

Do you see a wider impact? Does the case show how U.S. antitrust laws can be used to balance the playing field created when overseas (often Chinese) manufacturers acquire their U.S. customers and competitors?

Yes, this is one of the first private actions targeting collusive integration of foreign suppliers and U.S. brands. As more businesses use overseas manufacturers to produce goods, we can expect those manufacturers to be interested in controlling both the supply and distribution of the products.

This is bad for consumers and bad for markets … and is happening across the consumer electronics industry and is something for regulators and affected parties to pay attention to.

Jenna Greene *is editor of The Litigation Daily and author of the "Daily Dicta" column. She is based in the San Francisco Bay Area and can be reached at jgreene@alm.com*