

# August T. Horvath

**Partner, Co-Chair, Advertising & Marketing Practice**

*New York*

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August Horvath, a partner in Foley Hoag's Advertising & Marketing practice, is a noted advertising and antitrust attorney. He counsels clients on how to substantiate and defend marketing claims they wish to make for their products and services, helps them challenge false and disparaging advertising by their competitors, and assists them in managing relationships with competitors, customers and suppliers without running afoul of antitrust laws.

August provides representation in private false advertising and deceptive practices litigation before the Federal Trade Commission (FTC), state Attorneys General and the National Advertising Division (NAD) of the Council of Better Business Bureaus, and litigates in courts across the country. He has helped many companies in fields such as pharmaceuticals, retailing, sporting and other consumer goods, and online Internet services reach their marketing, distribution and competitive goals while overcoming complex challenges of advertising law and antitrust barriers.

August's antitrust experience includes litigating both civil and criminal cases before the Department of Justice (DOJ) Antitrust Division; FTC investigations and litigation related to conduct and mergers and acquisitions; and private litigation, including class actions with millions of class members. He also counsels clients in establishing marketing programs and distribution arrangements that comply with advertising and antitrust laws and regulations from the outset of their marketing plan development. August's Ph.D. and hands-on experience in survey research and statistical analysis give him exceptional insight into developing substantiation protocols, designing and assessing research into the implied meaning of advertising claims, and working with and against expert witnesses.

August has been listed among premier attorneys in the *U.S. Legal 500* and *New York Super Lawyers*. A fellow of the American Bar Foundation, he serves as co-chair of the American Bar Association Section of Antitrust Law, Agriculture and Food Committee.

## BAR ADMISSIONS

- New York

## COURT ADMISSIONS

- U.S. District Court for the Southern District of New York
- U.S. District Court for the Eastern District of New York
- U.S. Court of Appeals Sixth Circuit

## REPRESENTATIVE EXPERIENCE

- Represented a major food manufacturer in a false-advertising class action, formulating



## PRACTICES

Advertising & Marketing

Antitrust & Trade Regulation

Trademark, Copyright & Unfair Competition

Class Action

Litigation

Advertising & Marketing Litigation

Trademark, Copyright & Unfair Competition Litigation

Intellectual Property Litigation

FDA

## EDUCATION

Harvard Law School, J.D., *cum laude*, 1996

University of Southern California (USC), Ph.D., Communication Theory and Research, 1993

University of Windsor, 1988

## LANGUAGES

English

expert damages strategy that prevailed on summary judgment.

- Represent major food and beverage companies in class actions challenging advertising and labeling representations regarding ingredient content and nutritional characteristics.
- Represented a leading jewelry retailer in a Lanham Act suit challenging a competitor's claims for the performance of its diamonds. Negotiated a settlement prior to trial.
- Successfully defended a beverage company in a Lanham Act false advertising case that went to trial in the Central District Court of California and counter-alleged false advertising by the plaintiff. Client was completely exonerated after a nine-day jury trial, eliminating the need to litigate the counterclaims.
- Defended a toy company against a competitor Lanham Act suit alleging misrepresentation of its toys' performance, striking back with counterclaims and negotiating a settlement.
- Defended a major nutritional supplement manufacturer in a Lanham Act false advertising trial involving comparative advertising claims, securing a unanimous favorable jury verdict with a trial team.
- Represented a consumer healthcare company in Lanham Act cross-allegations of false advertising relating to efficacy and other properties of smoking cessation products.
- Won an NAD case and subsequent National Advertising Review Board (NARB) appeal, as challenger, persuading the NAD to take the unusual step of recommending changes to a product name that communicated false claims about spray paint coverage.
- Represented a major over-the-counter headache relief tablet manufacturer in an appeal before the National Advertising Review Board (NARB) of the Council of Better Business Bureaus.
- Defended a leading paint and wall coverings company in an NAD challenge and NARB appeal relating to claims of odor reduction.
- Represented a leading personal care products manufacturer in several NAD challenges regarding comparative efficacy claims for skin and hair products.
- Defended a plastics manufacturer in a challenge before the NAD relating to biodegradability and recyclability claims.
- Represented an Internet travel booking company in an NAD challenge to its claims of cost savings.
- Represented a retailer in a price discrimination suit brought by independent auto-parts retailers.
- Represented a tech company supporting the wireless industry in a price-fixing class action alleging collusion in the market for 5-digit "short code" phone numbers.
- Defended a major technical consulting service in a litigation and trial alleging misappropriation of trade secrets.
- Represented a major recorded music company in a multidistrict price-fixing class action brought by retailers; an indirect-purchaser price-fixing class action brought by consumers; and an FTC investigation into minimum advertised price (MAP) policies, followed by more than 100 resale price maintenance class actions brought by consumers in federal and state courts.
- Represented a major tobacco company in a multidistrict price-fixing class action by

cigarette wholesalers, as well as in a class action brought by tobacco growers alleging that major U.S. tobacco makers fixed their purchase prices of raw leaf tobacco.

- Represent dietary supplement manufacturers in investigations by the FTC and by state attorneys general relating to ingredient and efficacy claims.
- Represented a major household goods manufacturer in an FTC investigation of environmental claims.
- Represented an automotive products company in FTC litigation alleging false advertising of the performance of car engine oil additives.
- Defended an international auction house in a criminal price-fixing case brought by the DOJ.
- Represented a major airline in a monopolization (predatory conduct) suit brought by the DOJ.

## HONORS & INVOLVEMENT

### Honors

- Listed in *The Best Lawyers in America*, Antitrust Law (2018-2020)
- Recommended in *U.S. Legal 500* for Antitrust (2009) and Marketing and Advertising (2010-2014) in New York
- Listed in *New York Super Lawyers* (2007-2009 and 2011-2018)
- Elected as a Fellow of the American Bar Foundation

### Involvement

- American Bar Association's Consumer Protection Law Developments treatise, co-editor-in-chief
- Antitrust Law Developments, an influential treatise published by the American Bar Association, Editorial Board
- American Bar Association Section of Litigation, Consumer Litigation Committee, Advertising & Marketing Subcommittee chair (2017-2018)
- ABA Section of Antitrust Law, Agriculture and Food Committee, chair (2015-2018); former council member and Consumer Protection Committee chair
- Food & Drug Law Institute, Food and Dietary Supplements Committee member

## PUBLICATIONS

### Foley Hoag Alerts and Updates

- CMS Final Rule Requires Prescription Drug Pricing Transparency in DTC Advertising (May 13, 2019)
- CMS Proposes Requiring Prescription Drug Price Disclosure in Direct-to-Consumer Advertising (October 17, 2018)

## SPEAKING ENGAGEMENTS

- Frequent invited guest speaker for business and legal associations on marketing, advertising and antitrust-related topics.