

**Mark T. Cramer**

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Shareholder

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Mark Cramer is a Shareholder in the Firm’s Litigation Practice Group and Chair of the Class Action Practice Group. He advises clients ranging from Fortune 50 corporations to startup companies about how to manage actual and potential business disputes in the context of their overall business goals. He collaborates with clients, their executives, and in-house counsel to formulate and implement customized litigation strategies. For example, where the client’s primary business interest was to resolve litigation to make the company more attractive to a prospective buyer, Mark negotiated a quick and favorable settlement to eliminate the exposure associated with the lawsuit. By contrast, when a large company was concerned that it was developing the reputation of being an easy mark for frivolous litigation, Mark engineered a hard-nosed and aggressive defense that resulted in a complete victory for the client and sent a message to the plaintiff’s bar that the company would rather pay its attorneys than settle meritless claims.

Mark’s clients have included national and international brands such as Accenture, DIRECTV, El Pollo Loco, Home Depot, Plantronics, Warner Bros., as well as financial services companies, a variety of startups, and their executives, directors, and officers.

Mark has represented clients in litigated disputes filed in state and federal courts throughout California and in federal courts throughout the country, including before the Ninth Circuit Court of Appeals and the United States Supreme Court. He has also resolved numerous cases through arbitration and mediation.

**Representative Matters**

- Represent a number of apparel companies and retailers in nationwide and California statewide putative class action lawsuits alleging violations of the California Consumers Legal Remedies Act, the California Unfair Competition Law, and the California False Advertising Law based on the sale of products labeled as “Made in the USA” that are alleged to contain one or more component parts that are foreign-made.
- Represent a home security company in a statewide putative class action alleging fraud and fraudulent business practices based on the automatic renewal provision in the company’s form consumer contracts.
- Represented a home security company in a statewide putative class action lawsuit alleging fraud, breach of contract, unfair business practices, and violations of the California Consumers Legal Remedies Act based on early termination fees. The court sustained demurrers to all causes of action without leave to amend.
- Settled a dispute on behalf of a private equity fund client that acquired a portfolio company and subsequently discovered that, prior to the acquisition, the seller had failed to disclose millions of dollars in tax liabilities. After sending the seller a demand letter with a draft complaint, settlement discussions began in less than 24 hours and the case settled on favorable terms in less than two weeks.
- An aerospace company client was threatened with a lawsuit alleging that exposure to hazardous materials manufactured at one of the client’s facilities had caused cancer in a number of individuals. To avoid the negative publicity, expense, and disruption associated with protracted litigation, the client stipulated to informal discovery followed by pre-lawsuit negotiations that resulted in a confidential settlement.
- For purposes of defending a consumer technology company client in a nationwide class action alleging that the client’s products posed a risk of hearing loss, Mark assembled a team of in-house and third party

experts to explain the underlying science and causes of hearing loss as well as the design and testing of the client's products to ensure that they did not generate sounds above safe levels. As part of an early settlement negotiation process, plaintiffs were presented with the relevant scientific data and provided with design specifications and test results for the products at issue, which also demonstrated that the products complied with the OSHA standards referenced in plaintiffs' complaint. The parties reached a nuisance value settlement with no monetary relief to the putative class.

- Retained by an entertainment-industry client approximately six months before trial in a case seeking millions of dollars plus punitive damages for personal injuries. Successfully reopened fact discovery, conducted additional depositions, and obtained additional documents from plaintiff and third parties. Moved for summary adjudication and knocked out plaintiff's claim for punitive damages before trial. Obtained a unanimous jury verdict at trial, which was affirmed on appeal.
- On behalf of a Fortune 50 technology company, Mark led a team of attorneys (and managed three e-discovery vendors) to conduct the fact investigation and document collection and production related to patent disputes pending in two separate International Trade Commission proceedings and federal courts in California, Texas, and Wisconsin. In less than three months, Mark and his team conducted more than 50 employee interviews and collected and reviewed a massive amount of documents and electronic data, which enabled the client to negotiate a global settlement.
- In the bankruptcy of what was then one of the largest grocery wholesale companies, Mark managed the mediation and settlement of hundreds of preference actions over a period of three months. He personally handled the mediations and settlement negotiations on behalf of the bankruptcy trustee. Mark managed a team of eight lawyers who reviewed and analyzed documents, invoices, payment records, and accounting records for each defendant subject to a preference action, as well as addressing each defendant's unique defenses. This process allowed as many as a dozen actions to be mediated each day and helped recover millions of dollars for the bankruptcy estate.
- Defended a major communications company in a dispute in federal court in Los Angeles alleging breach of contract, unfair competition, trade secret violations, and related claims. At the outset of the case, defeated a motion for a temporary restraining order and preliminary injunction. Almost six years of litigation later, with more than a hundred depositions and hundreds of thousands of documents produced, won summary judgment on the lion's share of plaintiffs' claims and then reached a settlement on the eve of trial.
- As part of a nine-month secondment to the in-house legal department of a Global 1000 corporation, advised and counseled executives and managers from various business units, investigated and helped resolve a variety of pre-litigation disputes, and managed outside counsel handling active litigation matters.

### **Pre-Litigation Counseling**

Mark regularly advises businesses and their principals about whether they have a viable claim or defense, the benefits and drawbacks of various dispute resolution options, and litigation-avoidance strategies. Specifically, Mark has counseled startups and established companies in industries such as advertising, technology, retail, fashion, real estate, construction, home security, privacy, food services, as well as professional service firms. Mark's pre-litigation counseling and strategic guidance has helped clients facing problematic situations involving contracts, breach of fiduciary duty, negligence, unfair competition, false advertising, fraud, trade secrets, trade libel, partnership disputes, private equity and shareholder disputes, as well as class actions. Examples include:



- In connection with potential private equity or M&A transactions, assessed litigation pending against the target-companies and advised clients and transactional counsel on likely exposure and outcomes.
- Advised executives of a large consumer technology company regarding potential litigation exposure resulting from an employee's personal comments and posts on an internet message board regarding a company competitor's technology.
- Reviewed clients' draft advertising materials, flagged potential issues, and proposed alternative language or approaches to minimize litigation risk.

## Published Opinions

Mark has represented clients in a variety of precedent-setting cases, including the following:

- Represented El Pollo Loco USA in a contract and trademark dispute with El Pollo Loco Mexico. The case was governed by Mexican law and involved the ownership rights of the El Pollo brand in Mexico. *See El Pollo Loco, S.A. de C.V. v. El Pollo Loco, Inc.*, 344 F. Supp. 2d 986 (S.D. Tex. 2004).
- Represented the Trustee in a bankruptcy case and hundreds of related adversary proceedings arising out of one of the largest Ponzi schemes in United States history. The case made new law in the Ninth Circuit concerning litigation arising out of failed Ponzi schemes. *See Rosen v. Neilson (In re Slatkin)*, 310 B.R. 740 (C.D. Cal. 2004); *Jenner v. Neilson (In re Slatkin)*, 222 Fed. Appx. 545 (9th Cir. 2007).
- Represented the California Institute of Technology in a putative class action brought by a number of employees challenging the constitutionality of a NASA-ordered background check program implemented at the Jet Propulsion Laboratory. Caltech was dismissed from the case as a matter of law without leave to amend. *See Nelson v. National Aeronautics and Space Administration, et al.*, 530 F.3d 865 (9th Cir. 2008); *Nelson v. National Aeronautics and Space Administration, et al.*, 506 F.3d 713 (9th Cir. 2007).
- Represented The Home Depot in a putative class action alleging breach of contract, unfair business practices, and violations of the California Consumers Legal Remedies Act in connection with The Home Depot's cabinet-refacing business. The case was dismissed with prejudice in a published opinion, which the Ninth Circuit affirmed on appeal. *See Spiegler v. Home Depot, U.S.A., Inc.*, 552 F. Supp. 2d 1036 (C.D. Cal. 2008), *aff'd* 2009 WL 3358556, No. 08-55782 (9th Cir. October 20, 2009).
- Represented The DIRECTV Group in litigation brought by a minority shareholder seeking to block various transactions involving DIRECTV Latin America, LLC and seeking significant monetary damages. The DIRECTV Group obtained summary judgment in the United States District Court in New York, which resulted in the dismissal of more than \$1 billion in damages claims. *See The DIRECTV Group v. Darlene Investments, LLC*, 2006 WL 2773024 (S.D.N.Y. 2006).
- Represented DIRECTV, Inc. in a number of consolidated lawsuits seeking hundreds of millions of dollars in damages based on alleged unfair business practices, breach of contract, and other legal theories. Several pretrial victories resulted in published decisions. *See NRTC v. DIRECTV, Inc.*, 221 F.R.D. 522 (C.D. Cal. 2004); *NRTC v. DIRECTV, Inc.*, 319 F. Supp. 2d 1040 (C.D. Cal. 2003); *NRTC v. DIRECTV, Inc.*, 319 F. Supp. 2d 1059 (C.D. Cal. 2003); *NRTC v. DIRECTV, Inc.*, 319 F. Supp. 2d 1094 (C.D. Cal. 2003). The cases settled on the eve of trial without any monetary payment from DIRECTV.



## Media and Speaking Engagements

Mark's articles discussing litigation strategy and ongoing changes in substantive law have been published in journals and magazines such as *Bloomberg Law Reports* and *Los Angeles Lawyer* magazine.

Most recently, Mark has been named one of Southern California's *Super Lawyers* (2014-2015). Additionally, for six consecutive years (2007-13), he was named a "Rising Star" and featured in *Los Angeles Magazine*.

Mark speaks regularly to lawyers and client groups about cutting-edge issues in business litigation:

- In January 2015, he served as a guest lecturer at the Geoffrey H. Palmer Center for Entrepreneurship and the Law at Pepperdine University School of Law, addressing risk management issues and formation considerations for start-up companies.
- In July 2014, he spoke at the Bridgeport Continuing Education Conference in Costa Mesa, California on advertising, marketing, and media law best practices.
- In February 2014, he spoke at the Hospitality Law Conference in Houston, Texas on proposed patent reform legislation targeting non-practicing entities (or "patent trolls").
- In Tokyo, he discussed the propriety of potential changes to Japan's Code of Civil Procedure to permit additional discovery procedures and ADR tools at a symposium jointly organized by the International Law Section of the State Bar of California and the Tokyo Dai-Ichi Bar Association.
- Since 2010, he has been a guest lecturer, addressing developments in Commercial Speech and False Advertising Law, at the University of Southern California Annenberg School for Communication & Journalism.

## Publications

- "Conquering Legal Xenophobia: Tips for Presenting and Proving the Laws of Foreign Countries in Federal Courts," *Bloomberg Law Reports—Litigation*, Vol. 1, No. 1, July 2011
- "Swindlers' List," *Los Angeles Lawyer*, June 2009
- "Contracts Written in Stone: An Examination of *United States v. Winstar Corp.*," 25 *Pepp. L. Rev.* 567, 1998

## Pro Bono & Community Involvement

Mark is actively involved in pro bono work and impact litigation, including the following:

- Obtained a unanimous reversal in the Ninth Circuit in a case of first impression under the Hague Convention on the Civil Aspects of International Child Abduction. *In re B. Del C.S.B.*, 559 F.3d 999 (9th Cir. 2009). The Court agreed with our client that the custody determination should be made in California under California law, and not in a Mexican Court applying Mexican law. The ruling was widely reported by the *Los Angeles Times*, the *Orange County Register*, and the *Associated Press*. Mark also served as amicus counsel to The Claremont Institute Center for Constitutional Jurisprudence in a redevelopment abuse case, *Fontana Redevelopment Agency v. Torres*, 153 Cal. App. 4th 902 (2007), in which he successfully advocated for the reversal of a trial court decision validating a redevelopment agency's misuse of property tax revenues.
- Served as amicus counsel to a number of crime victims and relatives of crime victims in a post-conviction DNA testing case in the United States Supreme Court. *District Attorney's Office v. Osborne*, 557 U.S. 52 (2009).



In addition, Mark serves as outside counsel to a nonprofit startup that researches, tests, and markets ecologically-friendly school and office supplies. Since 2004, Mark has worked on behalf of the Western Center on Law & Poverty, first as President of its Advisory Board, and since 2007 as a member of its Board of Directors. From 2007 to 2014, Mark served on the Board of Directors of the Los Angeles County Bar Foundation, which raised funds for Los Angeles-based nonprofits that provide legal services to immigrants, domestic violence survivors, and veterans, among others. He served as the Chair of the Foundation's 50th Anniversary Gala fundraiser. In 2014, the Foundation merged with the Los Angeles County Bar Association's pro bono projects and was renamed Counsel For Justice, which carries on the Foundation's work. Mark is currently the Senior Vice President of the Counsel For Justice Board.

### **Education**

Mark grew up in a small town in the Pocono Mountains of Pennsylvania and obtained his B.A., *summa cum laude*, from Dickinson College in Carlisle, Pennsylvania. Following that experience, Mark earned his J.D., *magna cum laude*, at Pepperdine University School of Law, in Malibu, California, where he was the Note and Comment Editor of the *Pepperdine Law Review*. Between 2006 and 2009, Mark taught a Conflicts of Law course at the Law School and, since 2009, has been a member of its Board of Visitors.

### **Areas of Practice**

Litigation  
Commercial Litigation

### **Court Admissions**

Supreme Court of the United States  
Supreme Court of California  
U.S. Court of Appeals for the Ninth Circuit  
U.S. District Court for the Central District of California  
U.S. District Court for the Eastern District of California  
U.S. District Court for the Northern District of California  
U.S. District Court for the Southern District of California



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