



**Richard B. Benenson**  
Shareholder

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**Denver, Colorado Washington, DC**

A senior litigator and co-chair of our Litigation Department, Rich Benenson's experience includes headline and groundbreaking cases. He's known for his enviable track record defending companies in complex litigation, antitrust, consumer protection, business torts, class actions and securities matters. He also regularly defends officers and directors in shareholder/investor claims of wrongful conduct and breach of fiduciary duty. He also helps clients avoid litigation by advising them on consumer protection and audit topics and strategies.

A problem solver on a large scale, Rich recently led the Brownstein team that facilitated a historic settlement with the Colorado Attorney General's office and the state's largest foreclosure firm resolving the State's two-year long consumer protection and antitrust investigation of foreclosure fees and costs. Likely the largest settlement of its kind the case has significant implications for how foreclosures are handled in Colorado and nationwide.

Rich also represents clients in a variety of other industries, including consumer goods, financial services, real estate, manufacturing, healthcare, technology, supplement/nutrition, telecommunications and energy.

Rich originally joined the firm in 2002. From 2005 through 2007, he left to become the senior vice president and general counsel of The Schaffer Companies, a privately held, mid-sized company. There, he was part of the executive management team that oversaw the company's significant growth and eventual sale. Rich was responsible for many of the company's operations, including government contracts, vendor disputes, Sarbanes-Oxley compliance and human resources. He also managed all litigation matters and the company's equipment and real estate leasing.

Rich frequently lectures before businesses, trade associations and the firm's shareholders and associates and provides industry commentary to national legal publications.

Rich serves on the firm's Executive Committee.

### **Previous Experience**

Senior Vice President and General Counsel, The Schaffer Companies

Judicial Clerk to the Honorable William J. Connelly, United States District Court for the District of Maryland

Summer Intern, Honors Program, U.S. Department of Justice Antitrust Division

### **Practices**

Antitrust, Class Action Litigation, Commercial Litigation, Consumer Protection, Cybersecurity, Political Law

### **Consumer Protection**

An extensive body of state and federal law protects consumers against fraudulent, deceptive, abusive and unfair business practices. These practices include misleading advertising and sales tactics, faulty credit financing and reporting, harassing or unfair debt collection practices, poor product quality, and unfair trade competition, fraud, deception, and unfair business practices. Rich uses his experience with high-stakes consumer protection litigation to assist clients in navigating today's risky regulatory and litigation landscape.

In recent years, the risk of consumer protection claims for companies that manufacture, distribute, advertise and service consumer and financial goods or products and services has grown exponentially. Driven by the Consumer Financial Protection Bureau (CFPB), state attorneys general and an aggressive plaintiff's bar, consumer protection theories are increasingly being applied to a broader scope of goods and services – particularly in the financial services sector. Challenges include misleading advertising and sales tactics, faulty credit financing and reporting, harassing or unfair debt collection practices, poor product quality, unfair trade competition, fraud, deception and unfair business practices. Understanding the current and trending challenges is critical to successfully navigating today's risky regulatory and litigation landscape.

Rich has represented companies defending individual and class action claims under state and federal antitrust laws, state unfair deceptive trade practices acts, state and federal fair debt collection practices acts, and in other consumer protection and competition disputes. Rich also regularly represents companies in examinations, investigations and enforcement actions by the CFPB and state attorneys' general. For example, Rich led the Brownstein team that facilitated a historic settlement with the Colorado Attorney General's Consumer Protection Office and the state's largest foreclosure firm resolving the state's two-year long consumer protection and antitrust investigation of foreclosure fees and costs. Likely the largest settlement of its kind, the case has significant implications for how foreclosures are handled in Colorado and nationwide.

## **Compliance**

Rich has the perspective and skills to help clients comply with the myriad state and federal consumer protection statutes and regulations, develop effective compliance strategies and strengthen their existing compliance programs. Since the enactment of the Dodd-Frank Act and the creation of the Consumer Financial Protection Bureau (CFPB) in 2012, ensuring compliance with consumer protection laws and regulations has become increasingly challenging as new technologies, product innovation, and aggressive investigations and enforcement actions from the CFPB have changed the nature of consumer protection compliance efforts. Rich has vast experience helping clients resolve consumer protection investigations, enforcement actions and consumer class action. Applying his experience with regulatory and litigation pitfalls and drawing on his countless hours in the courtroom, he represents companies undergoing CFPB, state attorney general and other regulatory examinations, investigations and enforcement actions. He also conducts mock examinations and internal auditing of existing compliance programs.

## **Class Actions**

Class actions present clients with great risk to reputation and finances. In an ever-changing technological and regulatory landscape, businesses and institutions are increasingly at risk for class-action litigation. State consumer protection statutes are becoming a popular vehicle for the plaintiff's bar to bring high-stakes, high-publicity litigation against corporations.

Rich has extensive experience defending and successfully resolving class actions, representing clients in putative class action lawsuits and negotiating consumer class settlements. He has served as lead trial counsel in more than a dozen matters. Rich has defended companies against class action claims under state and federal antitrust laws, state unfair deceptive trade practices acts, and state and federal fair debt collection practices acts, California's Proposition 65, and the Magnuson-Moss Warranty Act. His experience makes him a go-to attorney for companies looking to limit their exposure in high-stakes, class action litigation.

## **Representative Matters**

- Represented hospitality company in litigation suit alleging fraud and other common law claims regarding the location of the certain utility lines. Negotiated a walk-away settlement for client.
- Developed and conducted a consumer protection audit for public hospitality company in the time-share

market. The audit entailed reviewing every consumer-facing aspect of the company's business including its compliance with state and federal consumer protection laws. Following the audit, conducted multiple training sessions for all of the company's consumer-facing employees and management.

- Successfully moved to dismiss Colorado Consumer Protection Act (CCPA) case brought by a competitor in Colorado against two Florida companies in the automobile ancillary insurance industry and their officers and directors. The court ruled that the plaintiff failed to plead the requisite elements of a CCPA claim and failed to establish personal jurisdictions over the individual officers and directors. Notably, the court rejected plaintiff's argument that the harm element was satisfied by merely pleading that the plaintiff was a competitor and therefore suffered injury.
- Designed and conducted due diligence on behalf of venture capital fund that specializes in the educational fin tech space. Also advised client on compliance with state and federal consumer protection laws and regulations.
- Developed and conducted a consumer protection audit for a for-profit education company specializing in technology and coding bootcamps. The audit entailed reviewing every consumer-facing aspect of the company's business including its compliance with state and federal consumer protection laws. Following the audit, conducted multiple training sessions for all of the company's consumer-facing employees and management.
- Successfully represented one of the largest health insurance companies in the country in a lawsuit alleging violations of the Sherman Act and Colorado Antitrust Act. Asserted counterclaims under the Sherman Act, Colorado Antitrust Act, Colorado Consumer Protection Act, and ERISA, in addition to various tort claims.
- Obtained summary judgment in favor of defendant loan servicer on all claims in action brought by borrower for alleged violations of the Telephone Consumer Protection Act and the Fair Debt Collection Practices Act in connection with serving of loans.
- Defended client in state and federal class action lawsuits brought by music festival ticket purchasers and vendors seeking damages for alleged breaches of contract, unjust enrichment, and deceptive trade practices in connection with the cancellation of the event.
- Represented a client in matters concerning alleged violations of consumer protection and fair debt collection laws, in addition to private contract and tort claims.
- Represented a law firm in defense of a federal class action alleging claims under the federal Fair Debt Collection Practices Act.
- Represented client in putative class action lawsuit regarding disputed foreclosure practices and alleged violations of the Colorado Consumer Protection Act, the Fair Debt Collection Practices Act, and the Colorado Antitrust Act.
- Successfully resolved a class action lawsuit for defendant in which the alleged violations included violations of the California Unfair Competition Law and the Consumer Legal Remedies Act for alleged false and deceptive advertising related to the printed and online advertising of a particular personal care product.
- Represented client in litigation in disputed foreclosure action, asserting claims of breach of contract, violations of the Colorado Consumer Protect Act, the Fair Debt Collection Practices Act, intentional infliction of emotional distress, and civil conspiracy
- Conducted an antitrust review for a public company.
- Litigated to open the Torcido Creek road as means of access to Taylor Ranch property for beneficiaries of Colorado Supreme Court decree in the landmark case of *Lobato v. Taylor* 70 P.3d 1152 (Colo. 2003), which confirmed rights of descendants of Mexican settlers to access to land under Spanish land grant of 1884 and confirmed in the Treaty of Guadalupe Hidalgo ending the Mexican/American war.
- Successfully and efficiently represented international personal care product company in a California Proposition 65 class action lawsuit alleging that upon application, the particular cosmetic product released a

previously bound chemical, which required a Proposition 65 warning.

- Successfully defended a nutritional supplement company and its officers in Colorado and New York Attorney Generals' Consumer Protection and Deceptive Trade Practices investigations and related civil litigation.
- Successfully defended a company and its officers in derivative and direct shareholder litigation against claims of breach of fiduciary duty, negligence and civil conspiracy.
- Represented the officers and directors of Teletech Holdings Inc. in the \$11 million settlement of a class action securities fraud case in the Southern District of New York and a shareholder derivative case in Delaware involving allegations of options backdating.
- Successfully represented Madison Capital in an oil and gas case involving properties in Colorado and New Mexico.
- Represented Metalwest, one of six defendants, in a large antitrust case in Federal Court in Oklahoma City. The plaintiff, Champagne Metals, sought more than \$500 million in lost profits in damages, alleging a group boycott under Section 1 of the Sherman Act. After seven years of litigation, including an important decision by the Federal Appeals Court, the case settled during trial. Champagne Metals v. Ken-Mac Metals et al.
- Represented national company in lawsuit stemming from the purchase of multiple multi-million dollar assets.

## News & Events

- Brownstein Names Rich Benenson and Rob Kaufmann New Members of the Firm's Executive Committee
- Brownstein Hyatt Farber Schreck Attorneys Make 2018 List of Best Lawyers In America
- Brownstein's Rich Benenson Elected to Denver Metro Chamber Leadership Foundation Board of Directors
- Brownstein Hyatt Farber Schreck Well Represented In 2017 Chambers Rankings
- Brownstein Names Two New Executive Committee Members
- Dodd-Frank Rules Ripe for Rollback?
- Brownstein Hyatt Farber Schreck Attorneys Make 2017 List of Best Lawyers In America
- Evidence and Objections
- Brownstein's Richard Benenson Elected To Board Of Colorado Judicial Institute
- Brownstein Hyatt Farber Schreck Well Represented In 2016 Chambers Rankings
- The Pros and Cons of Arbitration Clauses: Drafting and Practical Strategies
- CFPB Unveils Rule on Arbitration Clauses
- Brownstein Welcomes Former SEC Associate Director to Its Securities Litigation Team
- SEC Regional Enforcement Chief Heads To Brownstein Hyatt
- SEC regional official joins Brownstein law firm
- The Pros and Cons of Arbitration Clauses: Drafting and Strategy Considerations
- Rich Benenson Named One of Law Week Colorado's 2015 Top Litigators
- Pros and Cons of Arbitration Clauses
- Non Profit Board Training
- Brownstein Facilitates Historic Settlement
- Brownstein Hyatt Farber Schreck Practices and Attorneys Well Represented in 2014 Chambers USA Rankings
- Consumer Finance Protection? Are You Kidding Me? What You Don't Know Can Hurt You
- Brownstein Hyatt Farber Schreck Names New Executive Committee & Department Co-Chairs
- Dispositive Motions
- Richard Benenson Appointed to Great Education Colorado Board of Directors
- Torcido Creek Road settlement and the Taylor Ranch case
- Brownstein files class action lawsuit to open Taylor Ranch Gate in pro bono litigation matter
- Litigation Training: Dispositive Motions

- Richard Benenson Named to Anti-Defamation League, Regional Mountain States Board of Directors
- Negotiation Workshop
- Litigation Core Skills: Summary Judgment Motions
- Litigation Core Skills: Motions Practice
- Richard Benenson Appointed to Denver Drug Strategy Commission
- Joint Defense Issues and Agreements
- Negotiation Workshop Part 3: Settling the Case
- Litigation Core Skills-Deposition Basics
- Richard Benenson Appointed to Global Livingston Institute Board of Directors

## **Community**

- Board of Directors, Colorado Judicial Institute
- Governor Appointee, Colorado Limited Gaming Control Commission
- Mayor's Drug Strategy Commission
- Board of Directors, Global Livingston Institute
- American Israel Public Affairs Committee (AIPAC)
- Board of Directors, Great Education Colorado
- Board of Directors, Anti-Defamation League, Mountain States Region (2008-2012)
- Board of Directors, Friends of the Denver Fire Department (2007-2012)
- University of Denver Law School Mentoring Program (2007-2011)
- Board of Directors, Colorado Youth Symphony Orchestra (2002-2005)

## **Publications & Presentations**

- FTC's Unfairness Claim is Dismissed in Closely Watched Device Data Privacy-Based Action, *Brownstein Client Alert*, October 10, 2017
- Obtaining a Toll-Free 800 Number Could Get More Expensive, *Brownstein Client Alert*, October 3, 2017
- Second Circuit Holds That the TCPA Does Not Allow a Consumer to Unilaterally Revoke Consent to Be Called That Is Part of an Executed Contract, *Brownstein Client Alert*, September 6, 2017
- The Future of Consumer Protection Regulation in the Homebuilding Industry, Co-author, *Builder & Developer*, August 2017
- CFPB Moves to Eliminate Class Action Waivers in Arbitration Clauses, but Congress Looks to Keep the Rule Off the Books, *Brownstein Client Alert*, July 12, 2017
- Affirmative Defenses and the Plausibility Pendulum, Co-Author, *Trying Antitrust*, Summer 2017
- Featured Topics: CFPB & Dodd-Frank and Business Challenges Related to Marijuana Legalization, Speaker, Leading Builders of America General Counsels Meeting, May 11, 2017
- House Financial Services Committee Plans Major Changes to Consumer Financial Protection Bureau, Co-author, *Brownstein Client Alert*, April 25, 2017
- California Deals Another Blow to Arbitration Agreements, But It Is Far From A Knockout Punch, Co-author, *Brownstein Client Alert*, April 19, 2017
- Recent Circuit Court Opinions Offer Guidance on Challenging the Standing Requirement for Plaintiffs in Data Breach Cases, Co-author, *Brownstein Client Alert*, March 21, 2017

## **Education**

- J.D., 1996, University of Maryland Francis King Carey School of Law, valedictorian
- M.B.A., 1995, with honors, University of Baltimore, Merrick School of Business
- B.A., 1991, Miami University

### **Admissions**

- Colorado, 2001
- District of Columbia, 1998
- Maryland
- U.S. District Court, District of Colorado
- U.S. District Court, District of Maryland
- U.S. Court of Appeals, Tenth Circuit
- U.S. Court of Appeals, Fourth Circuit

### **Recognition**

- *Best Lawyers of America*, 2017-2018
- *Chambers USA*, 2014-2017
- *Law Week Colorado's* 2015 Top Litigators
- *Law Week Colorado*, Barrister's Best People's Choice "Best Antitrust Lawyer", 2015
- *Benchmark Litigation* Future Star Award, 2015
- *5280* Top Lawyers, Litigation – Antitrust, 2015
- Leadership Denver, Class of 2012
- 50 for Colorado, Class of 2010

### **Membership**

American Bar Association  
Bar Association of the District of Columbia  
Colorado Bar Association  
Denver Bar Association  
Maryland Bar Association  
Federal Bar Association