

## Michael S. Sommer

PARTNER

Litigation  
New York

msommer@wsgr.com  
212-497-7728



### FOCUS AREAS

Board and Internal  
Investigations  
Commercial Litigation  
Government Investigations  
Litigation  
Patent Litigation  
Securities Litigation  
Trial  
White Collar Crime

### HIGHLIGHTS

- Nationally Recognized Expertise**  
Michael was selected as one of the 30 “National Stars” by Benchmark Litigation in the area of white-collar criminal defense.
- A Respected Peer in the Trial Bar**  
Michael is a fellow in the American College of Trial Lawyers.
- A Recognized Practitioner**  
Michael was named “Litigator of the Week” by the *American Lawyer* based on his representation of Mylan in a hostile takeover bid.

### EXPERIENCE

Michael Sommer, a Fellow in the American College of Trial Lawyers, is a partner in the New York office of Wilson Sonsini Goodrich & Rosati, where his practice focuses on a broad range of trial work extending to patent, antitrust, trademark and commercial litigation, as well as white collar criminal and SEC enforcement defense.

Prior to joining the firm, Michael was a partner and trial lawyer at McDermott Will & Emery.

#### Representative Civil Matters:

- Obtained a favorable jury verdict for client Interactive Brokers in an 11-year battle against Trading Technologies in the Northern District of Illinois. The jury rejected plaintiff’s theory which sought over \$3 billion in damages, instead siding with client Interactive Broker’s theory and limiting damages to \$6.6 million. Won summary judgment proving the invalidity of two of the asserted patents prior to trial.
- Michael represented Amphastar Pharmaceuticals, Inc. in a patent infringement action brought by Momenta Pharmaceuticals and Sandoz Pharmaceuticals in federal court in Boston. After a three-week trial, the jury found in favor of Michael’s client, concluding that the patent at issue was invalid and that the plaintiffs’ inequitable conduct also barred their claims.
- Michael represented Mylan Pharmaceuticals in a patent damages jury trial in the U.S. District Court for the District of Delaware. At the conclusion of the evidence, and after Michael’s summation revealed the deep flaws in the plaintiffs’ position, the case settled for a small fraction of the amount being demanded.
- Michael represented MasterCard in a series of five federal lawsuits alleging violations of various state right of publicity statutes. He succeeded in having all five of the cases dismissed in advance of discovery.

- Michael represented a major apparel company in a trademark infringement and breach of contract action brought by another major apparel company. After a two-week arbitration, the Panel found in favor of Michael's client.
- Michael represented Jordache Enterprises against a federal trademark infringement and dilution action brought by Polo Ralph Lauren regarding mounted-polo-player designs his client sought to use on various clothing and accessory items. Following a three-week trial, the jury found in favor of Michael's client, concluding that the graphics at issue did not infringe Polo Ralph Lauren's trademark rights.
- Michael represented the former CEO and president of a national title insurance company in a breach of contract case against his former employer. The case proceeded to trial in Santa Rosa, California, and after five weeks of testimony, the jury returned a verdict in favor of Michael's client on all claims. The judgment represented the largest judgment ever entered on behalf of an individual plaintiff in Sonoma County.
- Michael represented Chevron Corp. in a breach of contract and tortious interference action arising from Argentina's expropriation of shares of a natural oil and gas company. Chevron prevailed when the complaint against it was dismissed.
- Michael represented Oak Hill Capital Partners, a venture capital firm, in a breach of contract, breach of fiduciary duty action in Los Angeles Superior Court. Michael's client prevailed on summary judgment.
- Michael represented Mylan Pharmaceuticals in a breach of contract action brought by Bristol Myers-Squibb. Mylan succeeded in having the complaint against it dismissed.
- Michael represented the selling shareholders in a dispute over earn-out payments under a merger and sale agreement claimed to be owed from the acquiring corporation pursuant to the terms of the agreement. After extensive international discovery, the case proceeded to trial as an arbitration, and after four weeks of testimony and argument, a determination was entered in favor of Michael's client on all claims, including those for attorneys' fees and costs.
- He represented a trademark licensor in an arbitration in which a licensee sought \$12 million for breach of contract and fraudulent inducement. After testimony was heard, the licensee dismissed all of its claims and agreed to pay the legal fees of Michael's client.
- Michael defended an apparel company against an action brought by a model in the Southern District of New York to recover damages for the alleged unauthorized use of her likeness in a television commercial. The jury returned a verdict in favor of his client on all claims.
- Michael represented clients who asserted claims of tortious interference with a contract in the global shipping industry in a jury trial in the Southern District of New York. After two weeks of testimony, the jury found in favor of his clients, awarding them more than \$57 million in compensatory and punitive damages.

#### Representative Criminal Matters:

- Michael represented the Chief Investment Officer of Platinum Partners Hedge Fund in a criminal jury trial in the Eastern District of New York in which his client was charged with multiple counts of securities and investment advisor fraud, wire fraud, and conspiracy arising out of what the government described as "the largest Ponzi scheme since Bernie Madoff." After a 13-week trial, Michael's client was acquitted on all counts.
- Michael represented a managing director of a large New York investment bank who was charged criminally in federal court with insider trading and sued civilly by the SEC for the same conduct. Michael persuaded both the U.S. Attorney's Office and the SEC to dismiss their respective cases.
- Michael represented a partner of a major accounting firm who was being investigated in connection with tax shelters offered to clients of the firm. Michael succeeded in convincing the U.S. Attorney's Office not to seek an indictment of the client.
- Michael represented the president of a software company indicted for bank fraud. Following Michael's investigation and presentation to the government, the indictment was dismissed by the U.S. Attorney's Office.
- Michael defended a former senior vice president of a large technology company against charges of securities fraud and conspiracy in a six-week trial in the Eastern District of New York, with the jury finding his client not guilty on all counts.
- He represented the lead defendant in an insider-trading case in the Eastern District of New York. After extensive pre-trial litigation in both the district court and Court of Appeals, in which Michael argued that the government's theory was invalid as a matter of law, the government dismissed the indictment with prejudice.
- Michael persuaded the New York State Attorney General's office to dismiss its indictment of a medical professional charged with Medicaid fraud, arguing that the prosecution's theory was constitutionally invalid.
- He represented the lead defendant in a three-defendant jury trial in the Northern District of Ohio in which his client was charged with criminal tax fraud and conspiracy. After four weeks of testimony, Michael's client was acquitted on all counts.

Michael previously spent more than seven years as an Assistant United States Attorney in the Criminal Division of the U.S. Attorney's Office for the Southern District of New York. In this role, he investigated and prosecuted a wide array of securities fraud cases, including cases involving insider trading, fraudulent financial reporting, embezzlement, and various so-called Ponzi schemes. As a white-collar prosecutor, Michael worked closely with the SEC, the Federal Reserve Bank of New York, and various investigative groups within the Federal Bureau of Investigation. He also was appointed acting chief of that Office's Securities and Commodities Fraud Task Force. Overall, he represented the United States in more than 20 criminal jury trials.

Before joining the U.S. Attorney's Office, Michael was an associate at Cleary Gottlieb Steen & Hamilton. Following law school, he clerked for the Honorable Miriam Goldman Cedarbaum, United States District Judge for the Southern District of New York.

Michael previously served as a member of the firm's board of directors.

## CREDENTIALS

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### Education

- J.D., New York University School of Law, 1987  
*Cum Laude; Order of the Coif; Editor*, New York University Law Review
- B.A., Government, Wesleyan University, 1983

### Honors

- Elected as a Fellow of the American College of Trial Lawyers
- Selected for inclusion in *New York Super Lawyers*, 2006-2021
- Selected as one of 30 "National Stars" in the area of white-collar criminal defense by the Benchmark Litigation Survey

### Admissions

- State Bar of New York
- U.S. District Court for the Eastern District of New York
- U.S. District Court for the Southern District of New York
- U.S. Court of Appeals for the Second Circuit
- U.S. Court of Appeals for the Third Circuit
- U.S. Court of Appeals for the Sixth Circuit
- U.S. Court of Appeals for the Federal Circuit
- U.S. Supreme Court