

California Powerhouse: Munger Tolles & Olson

By **Cara Bayles**

Law360, San Francisco (October 10, 2017, 2:24 PM EDT) -- Founded 55 years ago in Los Angeles, Munger Tolles & Olson LLP reflects the state where it got its start, focusing on industries and legal matters that drive the California economy, representing big-name clients in Hollywood and Silicon Valley, and approaching litigation with cutting-edge creativity that reflects both those fields.

Examples of its unorthodox approach range from advising Mark Zuckerberg in litigation surrounding a plan — later nixed ahead of trial — to issue nonvoting stock in Facebook to the settlement it secured for Airbnb in May, which brought the company into compliance with a new San Francisco ordinance requiring hosting platforms to verify rentals.

Airbnb challenged the ordinance dictating all its host-users must register with the city as short-term rentals or else the company would face civil penalties of \$1,000 per day for each violation. The deal's elegant solution, which established a mechanism on the platform to register hosts, is just one example of the work Munger did last year that earned it a spot on Law360's California Powerhouses list.

Hailyn Chen, a Los Angeles based partner who represented Airbnb in another suit brought by a putative class of apartment complex owners alleging the company is liable for rowdy guests, said the firm's work for innovative clients in the tech industry can be challenging but position it well for the future.

"Technology is always several steps ahead of the law," she said. "I think our job is to come up with creative solutions to problems that have no clear solution."

Kelly Klaus, a partner in the firm's San Francisco office who specializes in intellectual property, said the bright line provided by new legislation quickly fizzles out.

"Over the last 20 years, you'd often have some clarity and then technology moved so fast it exposed the need for additional legislation or a new way of doing things. That is certainly the case with IP laws and issues of technology — which parties are liable for the infringement of someone else's work. It's led to disagreements over the Digital Millennium Copyright Act, safe harbor, issues of notice and take down and issues of liability," he said. "But developments of any kind always pose challenges for legal issues and for lawyers."



Klaus recently succeeded in defending a preliminary injunction he'd won for Walt Disney, Warner Bros. and Twenty-First Century Fox against the movie filtering service VidAngel Inc. The site, which lets users stream films without nudity and violence, argued its alterations to the original movies were fair use and were also protected by the federal Family Movie Act, but Klaus convinced the Ninth Circuit that VidAngel had violated the Digital Millennium Copyright Act's protections for digital encryption when it copied DVDs of movies and streamed them from its servers.

Klaus said technology also rapidly shifts the battle lines of litigation, as the tech platforms and content creators blur with services like Netflix and Hulu. That represents a sea change from when Munger was representing music and entertainment companies during the first wave of litigation over file-sharing services, with its win over LimeWire LLC.

Munger, home to 171 attorneys in California, has been a player in the entertainment industry since the firm was founded in Los Angeles in 1962, but other business has evolved with changes in the California economy, according to John Spiegel, a partner who's been with Munger for 31 years. Aerospace and defense, for example, was a big source of business during the 1980s, when companies like Lockheed Martin were prominent players with big government contracts that made them the target of investigations.

Now the firm finds itself defending unconventional clients against recently enacted laws. For example, it's currently defending Snapchat against allegations its overlay filters violate the 2008 Illinois Biometric Information Privacy Act. BIPA — one of the most robust state statutes protecting biometric information — requires written consent before a company collects a person's biometric information. The Snap feature that adds animation and other effects to snaps and stories, including popular options like cartoon dog ears and a matching tongue, uses facial recognition technology to create a face scan or template of the user.

But other aspects of the firm have remained constant, Spiegel said, particularly the ethos of Charlie Munger, one of the firm's founders, who still comes into the office frequently in spite of his responsibilities as a vice chairman of Berkshire Hathaway.

"Charlie's philosophy really is a constant," Spiegel said. "He's always said, 'The work on your desk is the best source of new business.' And he had the idea that the best way to build a law firm is to hire the best people you can find and give them a lot of opportunity early."

He said that approach, too, is distinctly Californian. While Munger's unusual, nonhierarchical structure has set it apart from East Coast firms for decades, Spiegel said it's born of the same regional culture that fostered tech startups.

"That's a California innovation, I think. That's what the tech industry has taught us: Focus on really, really, really smart, young people," he said. "These are totally different economic organizations than the industrial heartland or Fidelity."

Chen also attributes the firm's success — and its retention rate — to its unusual approach. Attorneys are given the opportunity to argue in court early in their tenure with the firm, and women, in particular, are supported, with benefits ranging from active mentorship to in-office daycare, she said.

As a result, its equity partnership is 23 percent women — higher than the 18.9 percent national average

for firms of Munger's size, according to Law360's Glass Ceiling Report. In the past five years, nearly 50 percent of the attorneys promoted to equity partner were women, the firm said.

Munger's unconventional, egalitarian approach is also a draw, according to Chen. Attorneys aren't required to specialize in a particular practice area and decisions are made by consensus, which gives all its employees a sense of ownership over the firm.

"Our firm's hiring decisions are done at meetings that are open to attorneys at every level," she said. "People, regardless of seniority, are encouraged to participate."

Take for example Munger's first foray outside of California this year, when it opened an office in Washington, D.C., helmed by former Solicitor General Don Verrilli. The firm has traditionally resisted the temptation to open other offices, opting instead for a slow-growth model, but Verrilli's expertise and the talent he could recruit from D.C. presented an exciting opportunity. That decision, too, was made by consensus, and while there was a lot of enthusiasm for the venture, Chen said Verrilli was treated to a job application process that was distinctly Munger.

"He must have met over 100 attorneys over the course of a few days of interviewing in California," she said. "That really reflects values of the firm."

--Additional reporting by Suevon Lee, Joyce Hanson, Bill Donahue, Ryan Davis, Shayna Posses and Melissa Daniels. Editing by Jeremy Barker.