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Gibson Dunn Secures Second Circuit Win Just Hours After Argument

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On February 3, 2026, the U.S. Court of Appeals for the Second Circuit issued an extraordinary same-day order, putting the brakes on an injunction that had barred Gibson Dunn's client, The Nielsen Company, from offering its products at a "commercially unreasonable" price. The court of appeals issued its order at 3:30 pm following oral arguments that morning. The dispute arose from an antitrust challenge by Cumulus Media New Holdings Inc. to Nielsen's contracting and pricing practices for national and local radio-ratings data, brought while the parties were engaged in commercial negotiations. In December 2025, following an expedited evidentiary hearing, the district court entered a preliminary injunction barring Nielsen from enforcing its "Network Policy," which incentivizes certain customers to purchase local data, and prohibiting Nielsen from offering its national ratings product at a "commercially unreasonable" price. The injunction effectively subjected the parties' ongoing negotiations to judicial oversight. Nielsen moved for a stay pending appeal in January 2026. On the same day the motion was filed, a Second Circuit judge granted an administrative stay, temporarily halting enforcement of the injunction while the Court expedited briefing and considered the motion. Oral argument on the stay motion was held on February 3. During argument, the panel expressed deep skepticism about core aspects of Cumulus's case and the district court's decision, including their reliance on a dubious "constructive tying" theory, the existence of irreparable harm, and whether Nielsen could practically comply with an injunction requiring adherence to a vague "commercially reasonable" standard under threat of contempt. Hours later, the Second Circuit issued its order staying the preliminary injunction. The case is *Cumulus Media New Holdings Inc. v. The Nielsen Company (US), LLC*, No. 26-88 (2d Cir.). The Gibson Dunn team representing Nielsen on appeal includes partners Thomas H. Dupree Jr., Helgi C. Walker, Joshua Lipton, Jefferson E. Bell, and Scott K. Hvidt and associate Zachary B. Copeland.

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