

## Privacy MVP: Gibson Dunn's Ashlie Beringer

By Allison Grande



Ashlie Beringer

*Law360, New York (November 30, 2012)* -- Gibson Dunn & Crutcher LLP partner Ashlie Beringer has showcased the benefits of new technological advances to help clients including Apple Inc., Facebook Inc. and Flurry Inc. escape ground-breaking consumer class actions and resolve regulatory probes over their data collection and use practices, earning her a spot among Law360's Privacy MVPs.

Practicing in an emerging area of the law where precedent is sparse, Beringer has guided companies to successful conclusions in a number of cases addressing novel privacy claims. In June, her efforts led to the dismissal of Flurry, Pinch Media, and several other advertising and analytics service providers from multidistrict litigation alleging they unlawfully collected user data through apps located on Apple mobile devices. And in October 2011, she aided Yelp Inc. in defeating a proposed class action accusing it of fabricating negative reviews to boost advertising revenues.

“The issues that are presented in these cases are completely new, so that creates a need and an opportunity to present the facts in a positive light so that courts understand [that] what is happening with this new technology is positive for consumers as opposed to something that raises privacy concerns or warrants legal intervention,” said Beringer, a litigation partner in the firm's Palo Alto, Calif., office.

She also recently tapped into these skills to negotiate two of the first privacy-related enforcement actions filed by the Federal Trade Commission: a settlement of the regulator's claims that Facebook deceived users about the security and privacy of their personal information, which was finalized in August, and the resolution of claims that Myspace LLC misled users about how it shares personal information with third parties, which the agency granted final approval to in September.

Both agreements require the companies to submit to third-party privacy audits for the next 20 years, implement a comprehensive privacy program to protect consumers' information and refrain from future privacy representations, but neither pact contains any financial element.

“The FTC’s authority in the privacy area is very undefined, yet its practice is to insist on entering into settlements that impose obligations on companies for a 20-year period,” Beringer said. “In both matters, I was intensely focused on ensuring that the terms of the settlement would not constrain the companies’ ability to evolve and innovate over the next two decades.”

This approach is especially evident in the Facebook settlement, which was narrowly tailored to material retroactive changes to certain existing settings, but not to new or future products, Beringer noted.

“Particularly in the context of the Internet, where the pace of technical evolution and user expectations is rapidly evolving, it is critical that a company not sign off on a static mode of obtaining user consent or other models that may be obsolete in a few years’ time,” she added.

Beringer, who joined Gibson Dunn as an associate in March 2005 and now co-chairs the firm’s information technology and data privacy practice group, is no stranger to dealing with cutting-edge issues in the privacy space.

In April 2010, she was a key member of the Gibson Dunn team that successfully represented online advertising network Specific Media Inc. in an Internet privacy class action that was the first to be dismissed on the grounds that the plaintiffs lacked standing to bring suit under Article III of the Constitution because they hadn’t suffered a cognizable injury-in-fact, an argument attorneys now frequently use to dispose of privacy class actions.

Beringer’s work has not only benefited her existing clients, but has also earned her new clients including Apple, which hired her to work on the privacy MDL over the unlawful collection and use of consumer data on iPhones and iPads after she won the successful dismissal of its co-defendants Flurry, Pinch Media and others.

She is currently not only helping Apple defend the remaining claims in that case, but she is serving as counsel on all its privacy-related litigation, including two pending putative class actions in California and Texas alleging the company failed to enforce its developer guidelines to prevent third-party apps from uploading information from mobile users’ contact books and photos.

She also helped Apple obtain the voluntary dismissal of several consumer class action claims filed against it relating to its alleged use of Carrier IQ diagnostic software in September.

As technology continues to rapidly evolve and new privacy issues continue to emerge, there are sure to be many more chances for Beringer to help shape legal issues in the coming years — an opportunity she eagerly awaits.

“I have particularly loved working with technology companies on privacy matters because the legal issues are so undefined and tend to be critical to my clients’ business models,” she said. “It is incredibly satisfying when I am able to assist a client in surmounting unwarranted criticism or litigation targeting a new innovation or to implement a new product strategy in a way that avoids this type of legal response in the first place.”

--Editing by Elizabeth Bowen.