

## Privacy & CP Group Of The Year: Gibson Dunn

By **Allison Grande**

*Law360, New York (January 17, 2013)* -- Gibson Dunn & Crutcher LLP attorneys left their mark on the emerging privacy landscape by helping Flurry Inc. and others escape claims over their allegedly unlawful collection of user data located on Apple Inc. mobile devices and securing a pair of regulatory settlements that allowed Facebook Inc. and Myspace LLC to preserve their data use practices, earning them a place among Law360's Privacy Practice Groups of the Year.

With 40 attorneys practicing in offices worldwide, the firm's information technology and data privacy practice not only amassed an undefeated record of obtaining dismissals in high-stakes privacy-related litigation, but it also helped steer Facebook and Myspace to the completion of groundbreaking Federal Trade Commission actions accusing them of deceiving users about the distribution and security of their personal information.

Practicing in an emerging area of the law where precedent is sparse and companies are constantly trying to find new ways to maximize the value of the data that they hold, the practice group — which was formally established in March 2011 — has found success by recognizing that areas where companies need privacy-related advice extend well beyond the courtroom.

“When companies come to us, they are dealing with an array of issues,” practice co-chair Ashlie Beringer told Law360. “It's not possible to provide nuanced guidance without having broad in-the-field experience in this area. You have to understand the real-time evolution of the issues and the needs of the clients, so that makes the breadth and depth of the issues that we handle a key to the success that we have been able to achieve.”

The group brings together attorneys who have previously found success in private practice as well as with various government agencies, a composition that allows the group to feel confident taking on complex technological issues, private litigants and regulators, according to Beringer.

The four practice heads exemplify this diversity: Palo Alto, Calif.-based Beringer began her career by building a successful intellectual property practice; New York-based Alexander H. Southwell was as an assistant U.S. attorney in the Southern District of New York focused primarily on prosecuting cybercrimes; Los Angeles-based Debra Wong Yang served as the U.S. attorney for the Central District of California; and Dallas-based Sean Royall held a deputy director position at the FTC.

“Our ability to understand the technology and talk to courts and regulators about the technology in a way that is clear and effective is really unparalleled and has definitely contributed to our success,” Southwell said.

The group put these skills to use during the defense of Flurry, Pinch Media and several other advertising and analytics service providers in multidistrict litigation alleging they unlawfully collected user data through apps located on Apple mobile devices.

Overcoming an absence of case law addressing claims targeting the disclosure of mobile device data to applications and other third parties, the Gibson Dunn team convinced a Northern District of California judge in June to toss the claims against the eight mobile industry defendants following two rounds of briefing and argument.

After obtaining this dismissal, Apple — the only defendant left in the case — hired the firm to work on not only the mobile device suit but also to lead the defense in its other privacy-related litigation.

The firm responded by helping 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. The firm has also filed pending motions to dismiss in a pair of class actions accusing Apple of facilitating and failing to enforce its developer guidelines to prevent third-party apps from uploading information from mobile users' contact books and photos.

“A challenge in this area is that these issues are basically all brand new, but we have been effective in using the breadth of our experience in this area as well as our connection with regulators to negotiate with them and defend as necessary,” Southwell said.

The group leveraged its regulatory expertise to negotiate two of the first privacy-related enforcement actions filed by the FTC: 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 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 or requires the company to substantially change its business model.

“One of the things we work hard at is to gain the respect of the regulators that we work with and to show them respect as well,” Royall said. “Both the Facebook and Myspace matters were hugely successful outcomes from the perspective of our clients. Especially with Facebook, a real concern was that the FTC might be on a path to halt Facebook's ability to do what makes it so successful, but the resolution in no way impeded the ability for Facebook to continue to service its users in the future.”

Moving forward, the practice group intends to continue to build on the work that has gained it notoriety during its brief lifetime, as well as to further grow its international practice and its guidance on corporate transactions, work that Beringer noted has seen a spike in demand given the increasingly vital nature of data to corporations' global business operations.

“Our group came a little late to the game in terms of having an organized privacy practice, but we have not only gotten on the radar, we have had the opportunity to work on some of the most complex and interesting work in this area,” Royall said. “These international corporations could go out and get any law firm that they want, but they choose us, which is a testament to the quality of the people on our team, our multifaceted approach, and our firm's repeated ability to deliver excellent results for our clients.”

--Editing by Jeremy Barker.

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