

Technology Group Of The Year: Covington

By **Emmy Freedman**

Law360 (March 1, 2024, 1:51 PM EST) -- Covington & Burling LLP blocked a Montana law from going into effect that would have banned TikTok across the state and is currently taking on a challenge lobbed at Microsoft over privacy issues stemming from artificial intelligence, earning the firm a place among Law360's 2023 Technology Groups of the Year.

With more than 400 attorneys in its technology practice group, Covington has a global presence that allows it to help companies restructure across borders and contend with various policies surrounding technology.

Louise Nash, a partner and chair of Covington's global technology industry group, said the firm's breadth of offices in the U.S., Europe, the Middle East, Asia and Africa have attracted many of the largest global technology companies and innovators to seek out Covington's assistance.

"When clients reach out to a Covington lawyer, our collaborative culture means they are accessing the 400-plus legal professionals working in the technology group at Covington, many of whom hold advanced science and technology degrees, have years of experience as former senior in-house counsel to some of the world's most successful technology companies, or have served previously in government appointments and clerkships," Nash said. "That combination allows us to provide high-end legal advice in complex and highly sensitive matters across the globe."

One such Covington lawyer is Alex Berengaut, who represented TikTok as it took on suits lodged against it from states such as Indiana and Montana.

In Indiana, the attorney general accused the video-sharing app of misleading users about the Chinese government's access to their personal data and the appropriateness of the content available to children. The court dismissed the suit, determining that the case was not sufficiently linked to Indiana and the state's consumer protection statute didn't cover free platforms such as TikTok.

In Montana, the Covington team successfully blocked a law in late November that would have banned the app across the state starting Jan. 1. On behalf of TikTok and its users who launched the challenge to the would-be law, Covington argued the legislation would violate users' freedom of expression, and that it was based on unproven claims that China can access user records.

"One personal lesson that was important for me is the importance of judicial review and upholding



important Constitutional protections like free speech," Berengaut said. "Whether that's an action by a president or a law enacted by a state, you really see our system of checks and balances working when a court takes a hard look at it and has to analyze whether it's ultimately consistent with our constitutional values."

Covington's technology team also secured a win at the Ninth Circuit in an advertiser's lawsuit accusing Meta, Facebook's parent company, of charging it for fake ad clicks. Advertising company DotStrategy sought to represent a class of other advertisers that had been charged for the bogus clicks, but the Covington team successfully derailed its bid for class certification and secured a win at the summary judgment stage.

At the Ninth Circuit, a three-judge panel found in November 2022 that there was nothing in the record indicating that Facebook was lying about its promise not to charge advertisers for clicks that are determined to be invalid. Plus, the company had been transparent about some of the accounts on its platform being fake.

Ashley Simonsen, who worked on that lawsuit throughout, said the case was rewarding to work on, and it's now being referred to by other technology companies that have gotten caught up in similar disputes.

"Since we achieved those rulings, they've been cited by a number of defendants in other cases on various propositions, including a ruling that we obtained at the class certification stage relating to the requirement that a plaintiff meet his burden to show that he can prove class-wide exposure to the alleged representation using common proof," Simonsen said.

Now, the team is looking toward the future and what types of new issues might present themselves as technology continues to evolve. For example, the group is representing Microsoft as it combats a proposed class action alleging the company and artificial intelligence research outfit OpenAI use stolen private information from hundreds of millions of internet users.

Simonsen said the lawsuit is still in its early pleading stages, and the company recently filed a motion to dismiss, but the dispute will likely be an early first impression case on these particular alleged privacy claims involving generative AI.

Covington's technology team agrees that it's cases like these, where the firm gets to be a leader in shaping new legal concepts, that drive their passion for this practice area.

"One of the fascinating things about technology law is, because you're dealing with an industry sector that's creating new and different types of products and services that never existed before, you're constantly confronted with novel legal questions about how long-standing legal doctrines apply in the context of these new technological settings," Berengaut said. "And that's a really fun and exciting area of the law to be in."

--Editing by Dave Trumbore.