

Compliance Group Of The Year: Covington

By Sarah Jarvis

Law360 (February 14, 2023, 2:02 PM EST) -- Covington & Burling LLP helped Uber secure a no-penalty agreement with the U.S. Department of Justice over a criminal investigation into the company's cover-up of a major data breach, and helped steer Discovery's \$43 billion acquisition of WarnerMedia, earning the firm a spot among Law360's 2022 Compliance Groups of the Year.

Covington has more than 500 lawyers focused on regulatory and compliance issues across the world, including in Belgium, Germany, China, Korea, Dubai, London, Africa and throughout the U.S. The firm also has more than 120 former senior government officials among its ranks.

Jennifer Saperstein, co-head of Covington's anti-corruption practice group, said that rather than having rigid walls around its compliance practice, the firm brought together experts from various disciplines, including anti-corruption, export control, cybersecurity, environment and product safety.

And unlike other firms that also have significant litigation, white collar and corporate practices, the "fourth leg of the chair" at Covington is its regulatory and compliance practice, she added.

"The origins of the firm very much were as a D.C. regulatory firm, among one of the specialties," Saperstein said. "It's grown around the world, where we have these deep regulatory compliance experts."

She said the firm had added local lawyers in different jurisdictions and had also sent lawyers from existing offices in Washington and London. Additionally, the firm has seen natural growth in its U.S. and European offices via its associates, who contribute to compliance-related practice areas.

Saperstein noted that clients often came to the firm with business problems that cut across disciplines, so the firm's collaborative work helped them find the best experts for the job.

"From the time I was a junior associate, I could pick up the phone and call a data privacy partner in Brussels and she would answer my questions or hop on with a client," Saperstein said. "We really do work that collaboratively and are incentivized to find our clients the right expert."



Steve Fagell, co-head of Covington's white collar practice, said collaboration was critical when the firm represented Uber in connection with a criminal investigation into the company's cover-up of a sprawling 2016 data breach in which information from 57 million riders was stolen. Fagell said the firm leaned on counsel within its white collar practice who had expertise in cyber issues, which allowed them to provide "the type of sophisticated legal advice and analysis that this matter required."

Uber accepted responsibility for concealing the breach from the Federal Trade Commission, according to a statement from the Justice Department. Specifically, the company admitted that its personnel failed to report the November 2016 incident to the FTC, despite the fact that an investigation into the company's data security was already underway, the DOJ said.

July's nonprosecution agreement acknowledged the change in Uber's executive management in late 2017 and the new leadership's "prompt investigation" of the breach. It also recognized that Uber had since invested "substantial resources" into restructuring and enhancing the company's compliance, legal and security practices, the DOJ said.

Uber first acknowledged the breach in November 2017, when CEO Dara Khosrowshahi said a pair of hackers infiltrated a third-party cloud computing service to pilfer users' names, email addresses and cellphone numbers. The disclosure came the same day as Bloomberg reported that the company had paid the hackers \$100,000 in an attempt to keep the information quiet.

Uber's former head of security, Joseph Sullivan — who also happens to be a former DOJ cybercrime prosecutor — was convicted by a California federal jury in October of criminal obstruction and concealment of a felony for hiding the breach, and he lost an acquittal bid last month.

Fagell noted that the DOJ appropriately credited the company for its cooperation and other changes, including a significant overhaul to Uber's senior leadership. He said that when the company's new leaders learned of the conduct at issue, they self-disclosed and offered extraordinary cooperation in the DOJ's investigation.

He said the company's thoughtful approach toward its compliance program and its engagement with investigators helped the company achieve a nonprosecution deal without any monetary penalty, monitoring or ongoing reporting requirements.

"They acted in a way that is fully consistent with the department's expectations, as those expectations have been articulated in 2022 and 2023," Fagell said. "Uber took those steps at a much earlier point in time, several years ago."

He also pointed to a December speech in which Marshall Miller, principal associate deputy attorney general at the DOJ, highlighted the company's actions and said its new management "didn't hide the ball; they did what good companies should do — they stepped up and owned up."

In another major matter over the past year, Covington represented Discovery in its \$43 billion acquisition of WarnerMedia, bringing in regulatory specialists from Washington, Brussels, London, Frankfurt and Beijing.

The deal was announced in May 2021 and received antitrust clearance from the European Commission that December, the firm noted. The mandated waiting period for the deal expired in

February 2022, and Covington said the deal had been cleared by regulators in more than 30 jurisdictions around the world.

Covington antitrust partner Derek Ludwin said he had to explain to regulators how the deal would benefit consumers, noting it occurred in a more difficult regulatory environment that was generally very active on the antitrust and regulatory enforcement fronts across the globe. And the deal itself was complicated because it involved two large, multifaceted companies, bringing different implications for different jurisdictions.

"What was difficult, but also interesting and fascinating, was making sure that we explained and gave the right information to each of the regulators in each of the jurisdictions, to give them the tools they needed to evaluate the deal properly," Ludwin said.

He said the deal was complementary for both parties, adding that the assets fit nicely together and "put the combined company in a position of being able to offer alternatives in the current media market."

Ludwin said he and his colleagues were able to show that they weren't creating a company that was going to be dominant or otherwise problematic, but rather that the combined company would increase consumer options among other large players that were already in the market.

"It was a question of making sure that we had the data and evidence to show that that was in fact true," he said of his approach to the deal.

He added that Covington applied the holistic compliance approach it undertook in the Discovery deal to acquisitions "all over the map."

"It was large and complex," he said of the Discovery deal. "But it was not structurally different from what we do for clients every day on the compliance front."

--Additional reporting by Hailey Konnath, Elliot Weld, Bonnie Eslinger and J. Edward Moreno. Editing by Karin Roberts.