

Technology Group Of The Year: Covington & Burling

By **Dave Simpson**

Law360 (December 18, 2020, 10:24 PM EST) -- It was another blockbuster year for Covington & Burling LLP's technology team, which helped Uber fend off a Foreign Corrupt Practices Act investigation and is helping TikTok's parent ByteDance navigate an unusual Trump administration executive order, landing the practice among Law360's 2020 Technology Groups of the Year.

Uber retained Covington as lead counsel to coordinate its defense in all U.S. Department of Justice and U.S. Securities and Exchange Commission investigations, including a DOJ investigation into potential FCPA violations in Indonesia, Malaysia, China, and India.

That investigation could have expanded to other countries around the world. Instead, with the firm guiding Uber's internal investigation and supervising presentations to DOJ, the ride-hailing company announced in January that the DOJ had closed its inquiry and would not pursue enforcement action.

"The Uber declination was a big victory, especially given that it was the Department of Justice," said Kurt Wimmer, the co-chair of Covington's data privacy and cybersecurity practice group. "That was one that we were particularly excited about because it was a great result for the clients and a long-term project that could have gone in many ways."

The firm also guided Facebook in a cross-border transaction with Plessey Semiconductor for the development and prototyping of micro-LED technologies for augmented reality glasses. Under the terms of the deal, Plessey will dedicate its LED manufacturing operations to Facebook.

The Facebook deal was just one of many undertaken in the past year by a team focusing on tech transactions led by Palo Alto-based partner Suzanne Bell.

"It's great to see the work that we're doing for Facebook expanding both in the privacy area and also in the tech transactions area," Wimmer said.

The firm's practice involving the Committee on Foreign Investment in the United States has also "exploded" recently, Wimmer said. Covington was lead counsel on the CFIUS review of Beijing Kunlun Tech Co. Ltd.'s 2018 acquisition of Grindr LLC. The firm negotiated a mitigation agreement with CFIUS



that ultimately resulted in Grindr's sale to San Vicente Holdings for an announced purchase price of \$608 million.

Wimmer pointed to U.S. relations with China as a complex issue that the firm's technology practice is watching closely. A prime example: Covington was retained by ByteDance as lead counsel to challenge the Trump administration's executive order attempting to ban the TikTok social media platform in the U.S. in August.

"We are spending a lot of time advising both U.S. and Chinese clients who are trying to get a grip on what will happen next. Is this a longer-term decoupling, and how are we going to continue to work with companies like ByteDance who turn out to be quite important to the American market?" he said.

The case is evolving, but the firm has had numerous successes, including a preliminary injunction against the administration's rules.

"In addition to the novelty of the order itself, the novelty of the conditions that led to the generation of the order and the unpredictability of how the executive branch might approach it in various ways, required a lot of different contingencies," Wimmer said. "It was very useful — in addition to our litigators, who are great — to have our former high-level government people who had been in the various offices, who understand the laws that underlie the executive order and on which the executive order relies."

Covington's scale allows attorneys to turn to other experts within the firm. Wimmer describes the firm's technology work from the past year as one large spider web spinning out from the technology practice and into other areas of the firm.

"We don't really have departments that are defined by four walls," he said. "We have practice groups that are pretty porous in their definitions, and that's helpful because almost all of us in the tech area are in multiple groups. For some of these issues that are kind of multifaceted and multidisciplinary, it's super useful to have our structure."

The firm doesn't have origination credits and instead has built its metrics toward collaboration.

"What we value, and what the management committee values in looking at how groups are working and how individual lawyers or senior lawyers are working is: How well are you sharing?" Wimmer said. "Not how much are you holding to yourself, but how well are you sharing? How effective are you in exposing a client to other areas that might be useful to them within the firm?"

--Editing by Peter Rozovsky.