

MVP: Covington's Alexander A. Berengaut

By Rose Krebs

Law360 (September 10, 2021, 3:17 PM EDT) -- Alex Berengaut led a Covington & Burling LLP team that scored a high-profile win for TikTok Inc. and its parent company when former President Donald Trump's attempt to ban the popular video-sharing network was blocked in federal court, earning him a spot among Law360's 2021 Cybersecurity & Privacy MVPs.

HIS BIGGEST ACCOMPLISHMENT THIS YEAR:

Berengaut led Covington teams that scored wins during the past year in high-profile cases involving actions by the government that invoked national security interests.

The Covington team represented TikTok Inc. and its parent ByteDance Ltd. after Trump issued an executive order last year attempting to ban the TikTok app based on data privacy concerns. Trump's order alleged that TikTok "automatically captures vast swaths of information from its users" and shares it with the Chinese government, the firm said.

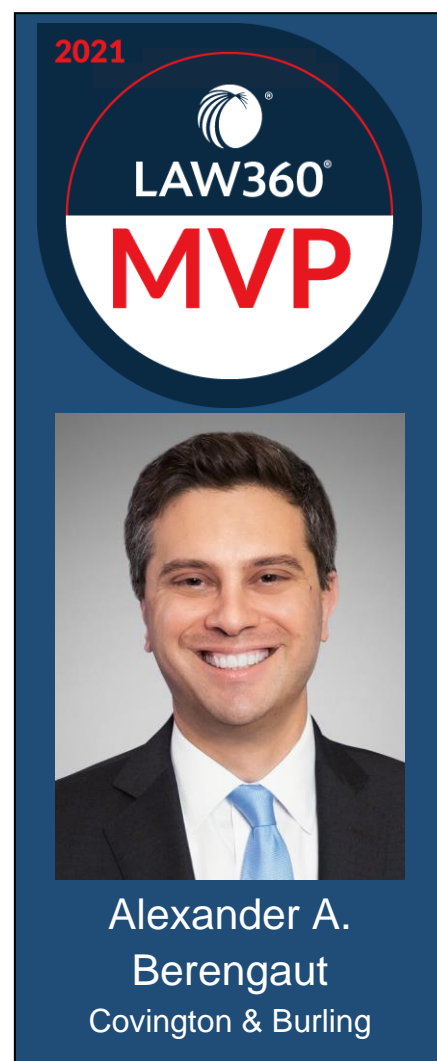
On multiple occasions, Covington won injunctions from federal judges, with a ruling in December halting remaining proposed restrictions that would have effectively disabled the app. In June, President Joe Biden revoked the Trump-era order that sought to ban the app.

"It was a challenge because the government gets a lot of deference when it acts in the national security realm," Berengaut said of the case. "It was a particularly rewarding success."

At issue in the case were limitations set forth in the International Emergency Economic Powers Act that protect personal communication and exchange of ideas, he said.

"These exceptions we were asking the court to apply predated apps like TikTok, so it was interesting to interpret these limitations based on an app like this," Berengaut said.

Cases that involve the enjoining of governmental actions invoking national security are interesting ones to litigate, he added.



"We thought that we had good arguments under the provisions of the law," Berengaut said.

HIS BIGGEST CHALLENGE THIS YEAR:

Berengaut said dealing with expedited and high-stakes injunction matters requires coordination among a litigation team and good communication with clients. Such cases are a challenge even in ordinary times, let alone amid a pandemic, when coordinating strategy had to be done remotely, he added.

Handling "fast-moving preliminary injunction matters" requires immediately figuring out what has to be done and who will do it, he said.

And the firm's success the past year securing key wins under such "compressed timeframes" and amid the pandemic was especially rewarding, Berengaut said.

Another of those successes, Berengaut said, was Covington's representation of Xiaomi Corp. after the U.S. Department of Defense, in the waning days of Trump's presidency, designated the electronics company as a Communist Chinese military company.

The designation, which meant U.S. citizens were prohibited from transactions involving the company's securities, caused the company to quickly lose \$10 billion in market capitalization, the firm said.

In March, a federal judge issued a preliminary injunction blocking the designation and the company's stock once again surged and market capitalization losses were restored, the firm said. And in May, the Department of Justice vacated the designation, ending the case.

"Under the circumstances, we were able to pull something together that was able to make an impression with and persuade the court," Berengaut said of key cybersecurity wins the firm scored during the past year.

WHY HE'S A CYBERSECURITY & PRIVACY ATTORNEY:

Berengaut said his practice area is interesting and fulfilling because it so often requires working on cases that involve technology that wasn't around when laws at issue were written.

As an example, Berengaut cited the personal communication exception in the International Emergency Economic Powers Act, the law at the center of the TikTok case. That provision protects any postal, telegraphic, telephonic or other personal communication, he said.

Convincing the court that the 1970s-era law's limitations should be applied to newer technology such as TikTok, the same way it is to telegraphic or telephonic communications, can be a compelling exercise, he added.

WHAT MOTIVATES HIM:

Two things Berengaut said he keeps on his mind, and that fuel his work as an attorney, are living up to clients' expectations and making his firm and colleagues proud.

"When a client trusts you on matters that are of importance to them, you really want to live up to that trust, and your commitment to the litigation," he said.

Covington's environment is built on teamwork and collaboration leading to good results, he added.

"You want to live up to that collective effort, endeavor and accomplishment," Berengaut said. "That's what gets me motivated."

HIS ADVICE FOR JUNIOR ATTORNEYS:

"What I say, and what I have benefited from, is when you are starting out, choose the professor and not the class," Berengaut said.

The path to becoming a good and accomplished attorney starts with having good mentors, regardless of whether they are in your practice area, he said.

Attorneys starting their careers need to learn from experienced attorneys who will offer them valuable guidance and perhaps even steer them into the practice area that best suits them, Berengaut said, adding that mentorship is the key for attorneys to learn the ropes, grow and find their way in the profession.

— *As told to Rose Krebs.*

Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2021 MVP winners after reviewing nearly 900 submissions.