

Privacy & CP Group Of The Year: Reed Smith

By **Greg Ryan**

Law360, New York (January 06, 2012, 7:37 PM ET) -- Reed Smith LLP finessed plaintiffs in multimillion-dollar Web tracking class actions into refining their claims, then flexed its technical expertise to free E-Trade Financial Corp. and two other clients from the suits, showcasing the strength that put the firm on Law360's list of Privacy and Consumer Protections Groups of 2011.

The privacy team at Reed Smith represented E-Trade, Skype Inc. and Phillips North America Corp. in the litigation in Arkansas state court. The plaintiffs alleged those companies and nine others used local shared objects, or so-called Flash cookies, to bypass efforts by visitors to their websites to delete cookies. The cookies violated Arkansas anti-hacking laws, they said.

Mark S. Melodia, co-head of Reed Smith's data privacy, security and management group, spearheaded a dozen-firm defense of the companies, crafting a dismissal motion with partner Paul Bond that led the judge to call for more specific allegations.

The duo then joined with partner Steven B. Roosa, a technical specialist, and counsel Christopher G. Cwalina, who works with E-Trade and other Reed Smith clients on Flash cookie usage and disclosure, in meetings with plaintiffs' counsel and their expert. Since the plaintiffs had detailed in their renewed claims which cookies they were targeting, Roosa and Cwalina were able to walk their opponents through the beneficial purposes of the cookies.

"Really through a series of more technical than legal meetings, we were able to address the concerns they thought they had," Melodia said.

The meetings convinced the plaintiffs to drop their claims against E-Trade, Skype and Phillips in October, even as they pressed on with their allegations against other defendants. Reed Smith's clients walked away from the litigation without paying a dollar to their opponents.

The dismissal marked only one of the impressive victories the privacy team racked up in 2011, a banner year for the group, which has more than 40 attorneys in 13 offices worldwide, including New York; Princeton, N.J.; Washington; Richmond, Va.; Chicago; and San Francisco.

"There are a number of good firms that do privacy work, and a number of good firms that do consumer class action defense. The overlap between those two groups is very small," Melodia said. "We're one of a handful of firms that can truly say we do both at an expert level."

The firm faced another consumer class action centered on privacy in a dispute before the Seventh Circuit over the reach of the Driver's Privacy Protection Act.

In that case, a proposed class of Illinois residents appealed a ruling that Reed Smith's client West Publishing Co. could obtain drivers' personal information from motor vehicle departments in order to resell it to legally authorized parties.

If the appeals court decided to reverse the lower court's ruling, West could have been liable for billions of dollars in damages under the DPPA. And even though the law was enacted in 1994, it had not been subjected to a significant number of published opinions, so the Reed Smith team could not rely on precedent.

To build its case, Reed Smith turned to what its attorneys consider the firm's trademark: cross-group cooperation. It huddled together Melodia, based in Princeton, and Cwalina, based in Washington, with Pittsburgh-based appellate attorney Kim M. Watterson and Chicago-based litigator Diane Green-Kelly, the attorney who would argue the matter before the court.

The pooling of talents paid off. The court sided with West in September, ruling the proposed class had failed to state a claim.

"You don't hire a foot doctor to do brain surgery. We do a lot of cross-discipline working together when it makes sense," Green-Kelly said.

The privacy group found success at the settlement table as well. Clients UniCare Life & Health Insurance Co. and WellPoint Inc. faced a proposed class action in Illinois federal court over a 2007 server breach that temporarily made UniCare customers' personal health information accessible online. The plaintiff sought identity theft insurance and money for finance monitoring, as well as damages.

Reed Smith struck an innovative claims-made deal with opposing counsel that cost their clients less than a traditional credit monitoring service settlement would have. Under the deal, UniCare agreed to pay for the monitoring of websites where personal information is bought and sold, mostly reserving credit monitoring for those class members who faced Social Security number breaches.

The firm said it had garnered favorable outcomes for its clients in almost 70 class actions in the past year.

Reed Smith's privacy team also threw its weight before the U.S. Supreme Court in 2011. It filed an amicus brief on behalf of the Healthcare Leadership Council and two former U.S. secretaries of health and human services, arguing against a Vermont law requiring companies to obtain physicians' consent to sell prescription information.

The high court ruled in June that the law violated pharmaceutical companies' free speech rights.

The group's success in 2011 was not limited to the U.S. The overseas team, led by group co-head Cynthia O'Donoghue in London, helped an agricultural commodities client avoid a fine or public censure from German regulators assessing the company's privacy policies. It also advised a semiconductor provider on developing a compliance strategy regarding its geolocation services, so it could avoid the type of tracking investigations faced recently by Apple Inc. and Google Inc.

Reed Smith has privacy attorneys in England, France, Germany, Greece, Dubai, Hong Kong and Beijing, a reach that allows the firm to help global corporations tackle everything from the proposed overhaul of the EU Data Protection Directive to privacy regulations in Oman and Yemen.

Compliance is also a focus among certain of the group's U.S. attorneys. Cwalina, for example, works with clients on disclosure issues, helping them draft privacy statements and policies.

The team prides itself on covering clients' privacy needs from every angle.

"We like to think of ourselves as being able to address not just litigation or just breach response, but any kind of privacy issue a company can face," Cwalina said.

Methodology: In November, Law360 solicited submissions from over 500 law firms for its practice group of the year series. The more than 550 submissions received were reviewed by a committee of Law360 editors. Winners were selected based on the significance of the litigation wins or deals worked on; the size and complexity of the litigation wins or deals worked on; and the number of significant, large or complex deals the firms worked on or lawsuits the firm had wins in. Only accomplishments from Dec. 1, 2010, to Dec. 1, 2011, were considered.

--Editing by Andrew Park.

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