

Privacy Group Of The Year: Wilson Sonsini

By Allison Grande

Law360, New York (January 15, 2014, 10:08 PM ET) -- Wilson Sonsini Goodrich & Rosati PC attorneys' eagerness to aggressively tackle cutting-edge privacy issues led to the defeat of consumer tracking and data misuse claims levied against Google Inc. and the quick disposal of spam-texting allegations facing Twitter Inc. and Square Inc., earning them a spot among Law360's Privacy Practice Groups of the Year.

The firm's privacy and data security group, which is making its second straight appearance on Law360's annual list, is able to consistently pull out favorable outcomes for its impressive roster of technology clients by borrowing from the vast knowledge it has gained from working on privacy issues since the beginning of the Internet age in the 1990s.

"A key reason for our success is that we have such broad and deep experience in helping innovative technology companies navigate the challenging problems that confront them," said Michael Rubin, a San Francisco-based partner and recent Law360 Rising Star. "This enables us to counsel companies so that they can avoid problems, and then if they find themselves in litigation or subject to regulatory scrutiny over a privacy issue, we are able to take our experience and use it to find the right solution for our clients."

Having such deep roots is especially important in the privacy arena, where the rules of the road are in flux and there is an increasing tendency to try to cast any perceived privacy violation into decades-old statutes that are ill-suited to address modern data collection and use quandaries, according to partner David Kramer.

"Companies who are looking to do the right thing and looking to walk the appropriate privacy line don't have anything to look to in order to be able to say that this is where the line is," he said. "But having lived through the first cycle of enhanced privacy scrutiny, I think that we as a group have a good sense as to where companies can improve and where companies need to draw lines."

The group showcased its skills in a pair of cases that it defended on behalf of Google during the past year, which resulted in the defeat of privacy claims brought under computer hacking statutes written more than two decades ago.

In October, U.S. District Judge Sue L. Robinson of Delaware tossed with prejudice multidistrict litigation accusing Google of bypassing Apple Inc.'s Safari browser privacy settings to illegally track consumers' Internet activity, finding the plaintiffs lacked standing because they hadn't alleged an injury-in-fact from

companies' use of cookies to track the browsing activities of Safari users.

The plaintiffs had attempted to avoid thorny injury issues and establish standing by shoehorning their claims into statutes such as the Electronic Communications Privacy Act and the Computer Fraud and Abuse Act, which were both written in 1986, but the judge sided with Google's argument that the laws were not meant to cover the accused conduct.

The victory came on the heels of another significant ruling that the team racked up for Google in March, when a California federal judge dismissed multidistrict litigation accusing the company of collecting and sharing user data without consent through its Android mobile operating system and app store.

While the judge found that the plaintiffs had failed to allege sufficient facts to show what harm, if any, resulted from the alleged tracking of their personal information, he did allow the plaintiffs to replead their claims.

The team continues to vigorously defend the allegations, filing a motion in August arguing that the plaintiffs' revamped complaint still failed to show that any of their alleged injuries — including drainage of batteries in their mobile devices or diminished value of their personal information — “satisfy the bedrock requirements for Article III standing.”

Kramer said that he hoped that the favorable rulings would help play a vital role in quelling the “reflexive rush to the courthouse” that is typically spurred any time a privacy shortcoming or snafu is reported.

“While the standing issue was addressed to some extent in both opinions, they also delved more deeply into substantive law and provide guidance for future courts on how those laws should be applied,” he said. “We hope that courts will use these opinions as advisory in confronting future challenges and that the rulings will promote the idea that not every online privacy problem gives rise to wiretapping or computer fraud claims.”

The group has also used its knowledge during the past year to help its clients fend off an avalanche of litigation under the TCPA. In two of these suits, plaintiffs accusing Twitter and Square of sending unwanted text messages dropped their claims after Wilson Sonsini attorneys filed Rule 11 motions, which asserted that the cases were frivolous and that the companies would move for sanctions if the claims were not dismissed within 20 days.

Outside of the courtroom, the group — which boasts dozens of attorneys based in Washington, California, New York, Seattle and Brussels — also provides counseling to companies such as Spotify on their international data security, data use and compliance issues, and has helped several of its clients escape regulatory investigations initiated by the Federal Trade Commission and the children's advertising self-regulatory unit during the past year.

The group also represented Google in the company's contested \$23 million settlement with the FTC over alleged consumer privacy violations, which won approval from a California federal judge in November 2012.

Following an active year, Kramer said that the team expects no letdown in 2014.

“The press reports on virtually every privacy incident, which is driving a lot of attention that regulators

and litigants are paying to privacy,” he said. “So I anticipate that it will continue to be busy.”

--Editing by Chris Yates.

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