

Cybersecurity & Privacy Group Of The Year: Latham & Watkins

By Allison Grande

Law360 (January 29, 2020, 1:55 PM EST) -- Latham & Watkins LLP is steering Facebook through the fallout from a cyberattack that impacted roughly 29 million users and helped Apple shake a proposed class action alleging security patches slowed down the processing speed of its devices, earning it a place among Law360's 2019 Cybersecurity & Privacy Groups of the Year.

The past year was a banner one for Latham's data privacy and security team, which includes more than 50 attorneys who work closely with colleagues across a range of practice areas in offices spanning the U.S., Europe, Asia and the Middle East.

"2019 was really a watershed year for the practice," said Michael Rubin, who is based in San Francisco and is a leader of the firm's data privacy and security practice.

The last 12 months has allowed the group to showcase more than ever its strategic growth and ability to coordinate seamlessly with other practice groups to guide clients through a rapidly evolving legal and regulatory landscape, according to Washington, D.C.-based partner Jennifer Archie.

"Latham is a very collaborative place, so what we're looking for are people of exceptional character, experience and depth, whom you can call at 4 on a Sunday afternoon at home and get answers from them," Archie said. "We've made a long-term investment to grow the practice with individuals like that, and 2019 was the manifestation of that investment in many ways."

The group has capitalized on that strategy in its ongoing work for Facebook, which turned to the team in September 2018 after discovering that hackers had exploited a vulnerability tied to a profile preview feature to gain access to approximately 29 million accounts.

The disclosure set off a flurry of inquiries from regulators around the globe as well as the immediate filing of litigation attacking Facebook's allegedly lax data security. Leveraging its deep bench and cross-border expertise, Latham has helped Facebook manage not only the legal and regulatory fallout but has also advised the company on issues such as product design and compliance.

"Working with Facebook has really enabled us to showcase our unique abilities and strengths and to



show how tightly coordinated all of our teams are and provide really unified and consistent advice and representation," said Serrin Turner, a New-York based partner and member of the practice group.

When it came to the 2018 breach, Turner said that he and his team "dug in right away" to assess the incident, drive consistent response to regulators and vigorously defend the class action litigation that had sprung up.

That included putting together what Turner described as a "creative and educational presentation" in response to U.S. District Judge William Alsup's demand for a cybersecurity tutorial to help the court understand the novel concepts before it and winning the toss of many of the users' claims in June.

"One challenge in this area is translating some of the tech concerns and issues that come up in these cases into a form that regulators or judges will understand, and that's something that we're well-positioned and well-equipped to do," said Turner, a former lead cybercrime prosecutor for the Southern District of New York.

The Latham team has also assisted Facebook and others in groundbreaking litigation under the Telephone Consumer Protection Act, including a trio of constitutional and statutory interpretation challenges that are currently before the U.S. Supreme Court.

The disputes — which involve firm clients Facebook, Charter Communications and the American Association of Political Consultants — all question whether the lower court was correct to sever from the statute what was found to be a constitutionally defective exception to the statute's blanket ban on autodialed calls rather than just striking down the entire ban. The Facebook matter raises the separate litigation-fueling question of what constitutes an autodialer under the TCPA.

The high court has agreed to review the constitutionality question in the context of a Fourth Circuit dispute that pits AAPC against the federal government, while the separate petitions by Facebook and Charter to review similar Ninth Circuit rulings on the issue are still pending.

The Latham privacy team has additionally found success in the past year for clients such as Apple, Turn Inc. and LifeLock Inc.

In August, a California federal judge nixed for good a proposed class action alleging that fixes for the security bugs known as Spectre and Meltdown slowed down the processing speed of Apple devices, after concluding that even after being allowed to amend the complaint, the plaintiffs still hadn't shown they personally experienced the problems.

The group also secured the demise of separate long-running and costly disputes claiming that online advertising clearinghouse Turn placed "zombie" cookies on Verizon customers' mobile devices and that LifeLock misrepresented how its core security product worked.

Both cases required the Latham attorneys to pursue an aggressive discovery strategy to show that the plaintiffs were misunderstanding or mischaracterizing the technology at issue. Their efforts resulted in plaintiffs counsel in the Turn litigation dismissing all claims in exchange for Turn not pursuing sanctions against them and the LifeLock plaintiffs moving to dismiss their claims with prejudice.

"These cases highlighted the well-worn Latham strategy of taking the cards you're dealt, adapting, and moving aggressively to try to get to the end in the most effective way possible," said Rubin, who worked

on the litigation team that led both cases.

The Latham team is expecting the upcoming year to be another busy and momentous one, with the rise of new privacy laws such as California's landmark Consumer Privacy Act and the European Union's General Data Protection Regulation prompting both consumers and regulators to pay more attention to these issues and take action against businesses that are believed to have overstepped these boundaries.

"We've been strategically growing through hiring selected talent over time," Rubin said. "And now that we have all the right pieces in place, 2019 was really the year where everything clicked and we've been able to capitalize on that with our global footprint and development in the market, and we expect that to continue."

--Editing by Jack Karp.