

Consumer Protection Group Of The Year: Mayer Brown

By **Lauraann Wood**

Law360, Chicago (January 18, 2018, 5:47 PM EST) -- Mayer Brown LLP's consumer protection practice built on its landmark Spokeo win while also helping shape pet food labeling law in 2017, earning the firm a spot among Law360's Consumer Protection Practice Groups of the Year.

The U.S. Supreme Court's May 2016 ruling in *Robins v. Spokeo* held that a concrete injury must be pled even in the context of a statutory violation, and this has had broad implications for cases alleging injuries-in-law under statutes like the Fair Credit Reporting Act.

And while the decision has shaped cases nationwide, it has also come back to benefit Mayer Brown's other clients.

Spokeo's precedent helped CitiBank in May escape a rehearing by the full Eleventh Circuit in the class action *Nicklaw v. CitiMortgage Inc.*, which was brought over the bank's alleged failures to file mortgage paperwork in a timely manner under New York law.

A three-judge panel had previously agreed with a lower court's finding that plaintiff Roger Nicklaw's suit had not alleged that the purported statutory violation caused or could cause him any actual harm. In a rare published order on a rehearing decision, a majority of the full circuit said that the suit failed to meet Spokeo's standing threshold.

Andy Pincus, who argued the Spokeo case at the Supreme Court on behalf of the self-proclaimed people search engine, told Law360 a certain level of satisfaction exists in being the firm behind such a significant and meaningful precedent. But there's a greater sense of gratification in hearing that precedent cited in other cases, including Mayer Brown's own, he said.

However, not all rulings made in light of Spokeo have been so clear-cut.

Mayer Brown has spent much of the year litigating "the second generation" of Spokeo precedent, Pincus said, which "sets the stage for the Supreme Court to address the issue it left open of: 'OK, a legal violation isn't enough. How do we decide when a claim of intangible injury is sufficiently concrete?'"

District courts have answered that question quite differently, which makes it "an issue that the Supreme Court can and should revisit to clarify the law," he said.



For Mayer Brown, being at the forefront of that issue strikes to the heart of what makes its consumer protection practice excel, according to Pincus.

"We're very proud that one of the things we offer clients is really thinking through and fighting existing and new legal theories," he said. "The key here in all of these cases is to see whether there's some way to cut off unjustified claims before the big dollar expenses of discovery start settling in and there's pressure to settle the case because of them."

The firm's attorneys scored this type of early win in July with a single-brief takedown of six lawsuits from Wysong Corp. Those cases lobbed false advertising claims against pet food manufacturers, including Wal-Mart and Mayer Brown client Nestle Purina, over premium food photos on pet food packaging.

Mayer Brown managed the team of lawyers who drafted and argued the motion to dismiss the lawsuits, which were consolidated for briefing.

The win for Mayer Brown's client came in the wake of a long-running false advertising fight between Nestle Purina and Blue Buffalo, a rival pet food maker. Those companies announced that they had struck a confidential settlement in November 2016, and Blue Buffalo is continuing to pursue claims against other rivals.

Keri Borders, who has worked on several of the false advertising matters, said both the Blue Buffalo and Wysong cases were significant because Blue Buffalo received news coverage and put pet food labeling concerns at the forefront, and she added that both cases "really broke into the pet food industry" and provided legal guidance down a relatively new path for false advertising case law.

"There were a lot of unique aspects to pet food that had not really been explored in the false advertising world," Borders said.

With courts seeing an increased amount of suits raising similar claims, she said, they're looking to the rulings in Blue Buffalo and Wysong for guidance at the motion to dismiss stage.

"It's really setting the table for how false advertising cases in the pet food world should be looked at and analyzed," Borders said. "For us, it's really been helpful in helping us to advise our clients and set the framework to how these cases are going to move forward as false advertising claims."

Although the number of false advertising and false labeling suits has steadily risen over the years, Borders said she and her Mayer Brown colleagues anticipate an eventual plateau in such filings — even as plaintiffs continue to find new areas to target.

And as plaintiffs' strategies evolve, Mayer Brown takes pride in its ability to craft novel arguments to defeat them. That gives clients confidence in the firm's work, Pincus said, and "that gives us a good feeling."

"The legal system should be reserved for real cases with real justification," he said. "To be able to provide judges with the tools to knock out cases early is rewarding for the client in the particular case, and in the broader sense for making the legal system function better."

--Additional reporting by Allison Grande, Kat Greene, Steven Trader and Dorothy Atkins. Editing by Jeremy Barker.

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