

Privacy Group Of The Year: Ropes & Gray

By **Andrew Strickler**

Law360, New York (January 14, 2014, 5:06 PM ET) -- Ropes & Gray LLP maintained a leadership position in some of the most closely watched data security and privacy cases of 2013, earning the firm a repeat recognition on Law360's Privacy Practice Groups of the Year.

Ropes partner Douglas H. Meal, who also won a spot on Law360's 2013 Privacy MVPs, said the scope of the team's data security and privacy work continued to grow last year alongside new regulations and legal challenges over the use and security of an expanding list of data.

"Typically, personal information, like a name coupled with financial information, has been the focal point," Meal told Law360. "But regulators and class action plaintiffs lawyers are more and more taking the position that a company's protection goes way beyond that, whether that's an email address or nonfinancial account log in information or whatever."

With the Ropes & Gray team counseling companies like Sony Inc. and Genesco Inc., Meal said, legal challenges related to privacy and disclosures also continued to expand last year.

Recently, the Ropes team was retained to defend Target Corp. on credit card brand claims triggered by a massive holiday season data breach believed to have affected as many as 70 million Target customers.

"The current regulatory push is to say, 'It's not enough to have told a consumer that you're going to keep the data you collect and use it in X, Y or Z ways,'" he said. "Now the thinking is more: 'We're not concerned about what you told them. We don't think you should be able to do X, Y or Z at all, whether or not you told them.'"

"That's clearly a monster issue on the horizon, and if the trend continues we're going to move into a world where regulators are trying to apply not established public policy but some kind of subjective smell test to decide what they think the law requires," he said.

The Ropes & Gray team had another busy year of successes, including a winning motion to dismiss decision for client Media Innovation Group and its parent company. The decision ended claims that the companies, along with Google Inc. and others, circumvented Apple Inc.'s Safari browser settings meant to prevent advertisers from monitoring users' Internet activity.

"One of the gratifying things about the decision on the motion to dismiss is that we were able to explain to the judge that everything was done in accordance with how the software was written, and nothing

was done to disable or override the software,” Meal said. “It was a situation where, yes, the judge found there was no injury to anyone having a cookie placed ... but it wasn’t just ‘no harm, no foul’ but a recognition there was no foul to begin with.”

The Ropes & Gray team is also representing Genesco Inc. in an ongoing bid to recover more than \$13 million from Visa Inc. that the retailer claims was wrongfully collected from the banks Genesco contracts with following a data breach.

Meal, along with Ropes intellectual property litigator Mark Szpak, are co-lead counsel for Wyndham Hotels and Resorts in connection to computer network breaches at Wyndham-branded hotels in which hackers used malware to collect payment card data during the transaction authorization process.

“It’s the first ever case to challenge the Federal Trade Commission’s authority to regulate data security practices, so it’s very significant,” Meal said.

The New Jersey federal judge overseeing the case recently delayed a highly anticipated ruling on Wyndham’s motion to dismiss in light of a commissioner’s congressional testimony about the scope of the agency’s unfairness authority.

A Ropes & Gray team led by Harvey Wolkoff, Jason Brown, David McIntosh, along with Meal and Szpak, also acts as Sony Inc.’s global coordinating counsel for multiple litigations and investigations related to cyberattacks on millions of Sony accounts.

The firm also continues to advise Nationwide Mutual Insurance Co. on a wide range of issues stemming from a 2012 cyberattack on the company’s computer systems, including internal investigations into the attack and communications with consumers and regulators. A ruling on a motion to dismiss two class actions filed on behalf of putative consumer classes is pending, according to the firm.

Ropes partner Deborah Gersh in Chicago is also lead counsel for Stanford University on privacy and data security matters, and the recent modifications to HIPPA privacy rules.

--Editing by Jeremy Barker.