

Consumer Protection Group Of The Year: Crowell & Moring

By Joshua Alston

Law360, New York (January 17, 2014, 8:11 PM ET) -- Crowell & Moring LLP had a busy 2013 — its work with AT&T, DuPont and Matrixx Initiatives, along with its efforts to help clients distinguish their products in a hectic, overcrowded market, earned the firm a spot among Law360's Consumer Protection Groups of the Year.

For every clever idea consumer products companies invent to get a leg up on competitors, there are unforeseen pitfalls as the marketplace evaluates advertising claims, and the attorneys of Crowell's advertising and product risk management group specialize in helping clients navigate the complex landscape of regulatory consumer products.

The Washington, D.C.-based firm helped AT&T Mobility LLC hammer out a resolution to a California class action suit filed by consumers who said they were duped into buying 3G-enabled iPads with an unlimited data plan that was nixed weeks after the product hit shelves.

The Crowell team convinced a federal judge to dismiss several of the claims and uphold arbitration agreements in others, and the court in September granted preliminary approval to a settlement that will result in consumers collecting up to \$60, with Apple Inc. paying out the lion's share and AT&T agreeing to a \$20 discount on an advanced data plan.

Christopher Cole, a co-chairman of Crowell's advertising group, told Law360 the watershed case evinces the mercurial nature of the cellular industry, which requires carriers like AT&T to be nimble and seek out the help of a law firm.

"The issues are ever present in this industry as cellular networks are continually evolving, and demand on those networks continue to build and change as do the mix of devices on those networks," Cole said. "Carriers are challenged to not only meet this demand but to develop compelling marketing propositions vis-a-vis their competitors."

Crowell got equally impressive results for longtime client DuPont Co. as the company worked to stamp out misleading claims for competitors that their cookware products were "green" and therefore represented a safer alternative to DuPont's industry-leading nonstick cookware.

The group successfully challenged advertising claims for the manufacturer of a ceramic cookware product, and the National Advertising Division in November 2012 ordered the company to discontinue advertising claiming its cookware was "eco-friendly."

Cheryl Falvey, Cole's co-chairwoman for the practice group, said the firm's work with DuPont can be challenging, with a spate of competitors attempting to take a bite out of DuPont's enviable market share with unsustainable claims about their products.

"It's like playing a game of Whack-a-Mole in that you deal with one company, and yet another one springs up that you have to deal with," Falvey said. "I think that's a trend we'll continue to see in 2014 in terms of claims regarding environmental safety and biodegradability."

Another trend expected to continue in 2014 is the Federal Trade Commission's increased scrutiny of products designed to reduce the risk of concussions, an issue Crowell tackled in 2013 in its representation of Brain-Pad Inc., the makers of a protective mouthguard that dissipates blunt force impacts.

The FTC initiated a nonpublic investigation into whether the company's claims of concussion risk reduction constituted unfair or deceptive practices, and Crowell negotiated a settlement that required Brain-Pad to adjust its claims but dodged civil penalties.

"It was not an insignificant victory that we were able to get a resolution that did not require the payment of any monies because the FTC has been demanding and receiving significant monetary penalties," Cole said.

Crowell credits its success to its interdisciplinary approach, which pulls in not only the knowledge of its consumer protection attorneys, but also the firm's deep bench in competition and class action, practice areas that are often implicated in consumer protection issues, leaving firms with underdeveloped or uncooperative practice areas flat-footed.

It's that breadth of knowledge that led Crowell to rebrand the practice group at the beginning of 2012, shortly after Cole and Falvey joined the firm. The once primarily safety-focused product risk management group added advertising to its name, the culmination of a shift that had been in the works several years as the group broadened its focus and enabled itself to handle client needs that are more complex than they appear at first blush.

"We really marry the advertising and consumer protection with safety, with food and drug, and other regulatory issues because they often don't fit into one neat box," said Cole. "We have lot of clients who come to us with what looks like a marketing problem that becomes a much more complex regulatory issue that cuts across federal and state agencies or results in class action risk."

"In a practice in which you're focused on advertising compliance, you may not have that capability, but we really work together as holistic team," Cole added. "That's the difference at Crowell."

--Additional reporting by Greg Ryan. Editing by Christine Chun