

Global Privacy & Security Team

Privacy Litigation

Seyfarth's cross-disciplinary Global Privacy & Security (GPS) Team has extensive experience litigating privacy-related matters, whether they involve violations of the Health Insurance Portability and Accountability Act (HIPAA), exposure of confidential information in the employee hiring process, regulatory investigations, violations of the Fair and Accurate Credit Transactions Act (FACTA), or consumer class action defense.

Our experience includes defending actions brought by regulators such as the Federal Trade Commission (FTC), State Attorneys General, or civil plaintiffs. In fact, Seyfarth defended the first Internet privacy case brought by the FTC and the first database security breach case brought by the New York Attorney General.

Privacy in the Workplace. Drawing from one of the country's best-known and respected labor and employment practices, Seyfarth's cross-practice GPS Team has a breadth and depth of experience we can bring to bear to skillfully and efficiently assist our clients when privacy and data security issues arise in the workplace. We regularly defend employers and background screening vendors in class action and single plaintiff cases dealing with compliance issues under the Fair Credit Reporting Act (FCRA) and other statutes that govern obtaining accurate information about prospective and current employees. We also counsel

clients on HR best practices and policies for maintaining confidentiality throughout the employee selection process.

Cyber-Litigation. We also have a wealth of experience in litigation involving social media privacy issues, such as obtaining information regarding anonymous/pseudonymous parties from Internet service providers, as well as building cases involving defamation, misappropriation, disparagement, and "spoofing" on websites, and litigating issues arising from computer and email hacking. We regularly prosecute and defend claims brought under the

Our Capabilities:



✓ Data privacy class action defense (Song-Beverly Credit Card Act, TCPA, FCRA)

✓ Derivative lawsuit defense

✓ Data breach litigation

✓ Corporate investigations of conduct

✓ Violations of FACTA

✓ Subpoena/warrant response

✓ Insurance claims for data protection and privacy breaches

✓ Regulatory investigations (FTC, OCR/HHS, FFIEC, AG, Foreign Data Protection Authority)

✓ NLRB investigations and litigation regarding social media

✓ Employee privacy torts and lawsuits under state constitutions, and off-duty conduct laws

Computer Fraud and Abuse Act, and we work with in-house IT departments and forensic examiners to bring claims when employees or competitors improperly access, copy, download, or destroy a company's proprietary information.

Class Actions. Our integrated team handles the class action litigation and regulatory investigations that frequently result when a company is accused of having violated the applicable laws protecting the privacy of consumer information. We regularly litigate consumer class actions on behalf of corporate defendants in federal and state courts, including class actions brought under the Consumer Legal Remedies Act, the Song-Beverly Credit Card Act, and the Children's Internet Protection Act (CIPA), as well as Computer Fraud and Abuse Act and Telephone Consumer Protection Act (TCPA) claims. For employers, we also have defended many dozen class actions brought by applicants under the Fair Credit Reporting Act, challenging processes related to background screening privacy issues. In these consumer and employment class actions, we have represented Fortune 500 companies and other businesses with a national presence, including supermarket chains, retail chains, Internet service providers, insurance companies, and manufacturers. Our clients also frequently call upon us to review and revise company policies and procedures to minimize litigation risks.

eDiscovery and Information Governance. Clients rely on our eDiscovery attorneys for counsel on information governance issues related to data security, privacy and records management. We bring experience and talent to craft practical and defensible approaches to meet discovery obligations in litigation and to comply with statutory and regulatory schemes while managing the costs and the realities of operating a business in today's economy. Likewise, we help companies shape data preservation, document retention and information technology usage policies, including privacy and information security plans. In addition, we provide customized training, coordinate computer forensic investigations and managed technology experts, vendor relationships and costs. Apart from being skilled litigators, our eDiscovery and Information Governance attorneys leverage extensive backgrounds and training in information technology systems, computer science, digital forensics and investigations and data management, security and privacy.

Intellectual Property. We help clients identify, protect, commercialize and enforce intellectual property rights, and attorneys on our GPS Team have litigated numerous

intellectual property cases relating to the technology behind data security, including encryption, passwords and hash values. We handle copyright, trademark, privacy and new media issues, including advertising, promotion, sweepstakes, marketing, computer software, data use, Internet, employee privacy, cybercrime and entertainment matters. Our attorneys frequently act as lead and local counsel in copyright, trademark, counterfeiting and grey market/diversion, false advertising, unfair competition, computer fraud and abuse, and Internet-related litigation.

Track Record of Results

- *Carson v. Michaels Stores, Inc.* (Cal. Super. Ct., San Diego County) Represented specialty retailer in a putative California class action alleging improper procurement of personal information from consumers as a condition to making credit card purchases under the Song-Beverly Act, California Civil Code Section 1747.08. Court sustained demurrer; motion for leave to amend denied.
- *Steinhaus v. American Express Travel Related Services Co.* (San Francisco Superior Court) Successfully settled putative class action challenging the sharing and/or use of customer information for marketing purposes.
- *Khachomian v. Chanel, Inc.* (USDC CD CA) Successfully defeated class allegations in national class action alleging willful printing of expiration dates on credit cards under the Fair and Accurate Credit Transactions Act (FACTA).
- *Jessop v. North American Bancard* (San Diego Superior Court) Favorably settled call recording class action on behalf of national merchant services provider. Client paid (with large insurance contribution) substantially less than 1% of \$1.7 billion potential exposure.
- Defended global logistics company in a nationwide Telephone Consumer Protection Act (TCPA) class action claim in the Northern District of Illinois. The complaint alleged that our client, without consent, texted "advertising" material to consumers. This global company sends tens of thousands of texts each day. As the TCPA assesses penalties on a per violation basis, potential exposure was in the mid-11 figures. Court dismissed plaintiff's complaint *with prejudice*.