

Class Action Group Of The Year: Gibson Dunn

By **Sean McLernon**

Law360, New York (January 24, 2013) -- Securing a groundbreaking early dismissal of an all-natural labeling suit against PepsiCo Inc. was among the recent notable achievements for Gibson Dunn & Crutcher LLP attorneys that landed the firm among Law360's Class Action Practice Groups of the Year for the third consecutive time.

The firm, which convinced the U.S. Supreme Court in 2011 to overturn the class certification of 1.5 million female Wal-Mart Stores Inc. employees who said they were subject to discrimination, continued its success in 2012, delivering significant victories for companies like Pepsi, Hewlett-Packard Co. and Dow Jones Co. as well as helping a pair of tech firms avoid allegations of illegal data collection.

Gibson Dunn began establishing itself as a go-to firm in the class action field two decades ago when class action practice group co-chair Gail Lees focused her energy on class actions full time. Lees and fellow co-chairs Andrew S. Tulumello and Christopher Chorba now lead a seasoned group of 100 lawyers who have consistently delivered positive results for a wide range of clients.

“What makes us unique as a practice group is we are the first — or at least among the first law firms to have a consumer class action group,” Tulumello said. “We can put a team together with expertise from years in the trenches fighting these consumer class actions, and that makes us a very formidable opponent in litigation.”

Tulumello and Chorba were two of the attorneys working on the Pepsi case in which the Gibson Dunn team successfully argued for the first-ever dismissal with prejudice of an all-natural labeling class action.

The plaintiff had claimed Pepsi unit South Beach Beverage Co. falsely labeled its 0-calorie Lifewater drinks as all-natural, noting that beverages contained unnaturally processed, synthetic and other artificial ingredients. In May, U.S. District Judge John F. Walter found that the suit's claims regarding vitamin labeling were preempted by federal law, and said the all-natural allegation couldn't move forward because it was based on just a single out-of-context phrase found on one part of the label.

“As a matter of law, there was no deception because the products fully and accurately disclosed all the ingredients,” Chorba said. “Because the product was principally composed of actual water, the notion that anyone was deceived about added vitamins and nutrients just wasn't plausible.”

Gibson Dunn is currently representing Pepsi and its subsidiaries in more than 30 other all-natural cases in federal courts across the country, most of which are in the early stages of litigation. In order to continue its success in the area, Chorba said Gibson Dunn attorneys bring a level of creative thinking to the process that sets the firm apart.

“For some firms, I think there can be a kind of cookie-cutter way of defending class actions that almost becomes a script,” Chorba said. “We try very hard to look at each case on a clean slate and really push ourselves to come up with new arguments, approaches and tactics, even if they haven't been tried before.”

The approach has proved successful in other consumer class actions, including a summary judgment victory in March for Dow Jones in which Wall Street Journal subscribers had accused the media company of breaching a contract by spinning off Barron's Online as a separate subscription publication. U.S. District Judge Miriam Goldman Cedarbaum found that Dow Jones acted within its rights under the contract, which allowed the company to change its services at any time.

Gibson Dunn attorneys also persuaded the Ninth Circuit in February to affirm the dismissal of a suit accusing HP of hiding a defect in its Pavilion Notebook computers. The appeals court said a California federal court made no mistake when it ruled that the consumers bringing the suit failed to plausibly allege HP's knowledge, or even the existence, of such a defect.

Additionally, the firm is thriving in the area of consumer privacy class actions, going a perfect 10-for-10 in getting those suits dismissed on the pleadings, according to Chorba.

One of the firm's most notable privacy class action successes came in June when U.S. District Judge Lucy H. Koh tossed a suit accusing Flurry Inc., Pinch Media and other advertising and analytics service providers of illegally collecting user data through apps located on Apple Inc. mobile devices.

Gibson Dunn prides itself on not just delivering victories for its clients battling potentially costly consumer class actions, but getting cases tossed quickly. Chorba said the firm has an “unparalleled win record getting cases thrown out early,” which allows their clients to focus on business activities rather than get bogged down in litigation.

“Broad-based discovery can be expensive, protracted and disruptive of business operations,” Chorba said. “It pulls people away from what they're supposed to be doing and forces them to prepare for depositions. Those disruption costs are significant, and helping clients avoid them helps set us apart.”

When necessary, however, Gibson Dunn has shown it is willing to battle until the very end to get the result it is looking for — a tenaciousness that sends an important message to plaintiffs' attorneys, according to Chorba.

“The opposition thinks you will just settle at some point, but our firm has a history of taking billion-dollar cases to trial and then winning,” Chorba said. “That allows us to credibly tell our adversaries that we are willing to fight.”

--Additional reporting by Megan Stride and Allison Grande. Editing by Andrew Park.