

Rising Star: Gibson Dunn's Joshua Jessen

By **Juan Carlos Rodriguez**

Law360, New York (April 02, 2012) -- Gibson Dunn & Crutcher LLP associate Joshua Jessen's trailblazing work in the emerging data privacy litigation area, especially his successful arguments that class action plaintiffs have lacked standing to file a complaint because there was no injury to them, have earned him a spot as one of five attorneys under 40 to be honored by Law360 as a rising legal star in the privacy and consumer protection practice areas.

Jessen, 38, works in the firm's litigation department in Orange County, Calif., and practices in the information technology and data privacy, intellectual property, and health care and life sciences groups.

He was a key member of the Gibson Dunn team that successfully represented online advertising network Specific Media Inc. in an Internet privacy class action that was dismissed in April 2010 on the grounds that the plaintiffs lacked standing to bring suit under Article III of the Constitution because they had not suffered a cognizable injury-in-fact.

The plaintiffs had claimed injury as the result of Specific Media's alleged placement of Adobe "Flash cookies" onto the computers of people who visited certain websites, allegedly for the purpose of tracking users' online behavior and circumventing their browser preferences.

Jessen led the successful motion to dismiss briefing, which argued that the plaintiffs had failed to allege any actual harm caused by Specific Media's alleged conduct, and handled the oral argument.

He said issues like those raised in the Specific Media case are in the legal forefront and don't seem to be going away anytime soon.

"Obviously in our information economy, data and people's information and how it's handled — especially with smartphones and social networking — present a lot of really interesting and complicated legal issues," Jessen said. "And the fact that it's a hot area certainly makes it even more interesting."

He said an aspect of those types of lawsuits he enjoys is that they involve things that millions of people are doing every day, whether they're using social networking sites, engaging in other online activity or using a smartphone.

"In the class action context, you typically have plaintiffs who are asserting claims that were never intended to cover this kind of activity. So it can be interesting as the lawsuit plays out because you often find federal statutes — such as the federal Computer Fraud and Abuse Act, which were enacted decades ago to deal with things like computer hacking — and plaintiffs will try to contort those to cover routine commercial behavior on the Internet," he said.

Jessen was part of another Gibson Dunn team that successfully employed the Article III standing defense for iPhone application designers who were accused of collecting and disclosing users' personal information located on mobile Apple Inc. devices without their knowledge or permission, allegedly in violation of several federal and state laws.

That class action was dismissed in September 2011 on standing grounds.

Jessen also was part of a team that used the same defense for a different proposed class action lawsuit that alleged online gaming company OpenFeint Inc. disclosed personally identifying information that resulted in the "de-anonymization" of consumers' devices and revealed extensive information about their mobile activities.

"That was a case where the plaintiffs actually voluntarily dismissed that action after we filed a motion to dismiss," Jessen said.

Ashlie Beringer, litigation partner in the firm's Palo Alto office and co-chairwoman of the information technology and data privacy practice group, called Jessen "one of the most talented attorneys I have ever worked with."

"He really has the whole package. He is an incredible writer, creative strategist and he is nimble and compelling in the courtroom," she said, adding that the area of law he has been focusing on is "exploding."

"Online and mobile data privacy was not really an area two years ago," she said. "I think he's very much played a role in shaping jurisprudence in this area, which is only going to become more important as more and more data migrates to platforms where it's vulnerable to third-party disclosure."

--Editing by Katherine Rautenberg.

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