



Big Litigation Win for Quiznos!

Thirteen separate groups of Quiznos franchisees who claimed to have opted out of the 2010 Quiznos National Class Settlement filed identical lawsuits in Colorado state court raising a variety of claims concerning Quiznos' supply chain, marketing programs, and other practices. As lead counsel for Quiznos, we responded with a flurry of punches, including motions to dismiss each of the complaints, motions to compel arbitration of six of the 13 lawsuits, and a motion to disqualify the Ballard Spahr law firm representing each of the plaintiff groups. We brought the disqualification motion under Rules 1.9 and 1.10 of the Colorado Rules of Professional Conduct, which govern duties to former clients and the imputation of conflicts of interest among partners in a single law firm. It was based on the past representation of Quiznos by certain current Ballard Spahr lawyers.

On May 20, 2013, the Denver District Court to whom most of the 13 cases were assigned (and whose ruling controlled in all 13 cases) granted our motion to disqualify Ballard Spahr. The Court ruled that Ballard Spahr's "continued representation of Plaintiffs would not only contravene Rule 1.10, but would also undermine public confidence in the integrity and fairness of the proceedings." For good measure, the Court also granted our motions in 6 of the cases to compel arbitration and stayed those cases pending the outcome of mandatory arbitration.

On May 30, 2013, the Colorado Supreme Court, sitting *en banc*, denied plaintiffs' petition challenging the Denver District Court's grant of our motion to disqualify Ballard Spahr.

Reminder - Children's Online Privacy Protection Act

Earlier this year, we reported that an amendment to the Children's Online Privacy Protection Rule (the COPPA Rule) would become effective July 1, 2013. As we draw nearer to the effective date, we wanted to remind clients of these changes, which will be of particular importance to franchisors and others who specifically market to children under the age of 13 or who use or contract with vendors who do so. The COPPA Rule amendment incorporates changes that the FTC believes are "necessary to keep up with evolving technology and changes in the way children use and access the internet, including the increased use of mobile devices and social networking." The thrust of the amendment is aimed at closing what the FTC perceived to be a loophole through which third parties were able to skirt the parental notice and consent requirements of COPPA by not collecting the child's name and address but, instead, using plug-ins, kid-directed apps and other websites to collect personal identifiers (for example, IP addresses, mobile device IDs, geolocation information, photographs and videos).

As we suggested in our earlier Alert, franchisors and others who specifically market to children under the age of 13 should review the information they collect from children under the age of 13, and make certain that their protocols are broad enough to capture the broader-based information that, as of July 1, 2013, will be covered under the revised COPPA Rule.

Firm News

Amy Cheng will be presenting a session entitled "Top 10 Things You Should Know in Taking Your Brand to the Next Level (and Pitfalls to Avoid)" at the International Franchise Association's Emerging Franchisor Conference in Ft. Lauderdale, Florida on November 13-14, 2013.

Ric Cohen will be presenting a session on franchise transfers and succession entitled "Transfers of Franchises: Disputes Arising from Assignments" at the ABA's Forum on Franchising meeting in Orlando, Florida on October 16-18, 2013.

Michael Daigle has been re-appointed co-chair of the International Commercial Transactions, Franchising and Distribution Committee of the ABA's Section of International Law for the 2013-2014 bar term and was the guest editor of the re-launch of the Committee's quarterly newsletter.

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Contacts

Amy Cheng
Fredric A. Cohen
Michael R. Daigle

Contact Information

312-243-1716 or amy.cheng@chengcohen.com
312-243-1717 or fredric.cohen@chengcohen.com
312-957-8366 or michael.daigle@chengcohen.com

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