

Technology Group Of The Year: Cravath

By **Kevin Penton**

Law360 (February 14, 2022, 2:02 PM EST) -- Cravath Swaine & Moore LLP in 2021 shepherded Robinhood's \$2.1 billion initial public offering and secured a major victory for Qualcomm Inc. at the Ninth Circuit that may have broader implications for the technology industry, earning the firm a spot as one of Law360's 2021 Technology Groups of the Year.

The Ninth Circuit in September vacated then-U.S. District Judge Lucy Koh's certification of a class of up to 250 million cellphone buyers who allegedly paid overages stemming from Qualcomm's purported anti-competitive licensing practices.

The appellate court rejected the finding by Judge Koh — who was later appointed to the Ninth Circuit — that a California antitrust law should apply to the entire class. Because other states' laws should apply to claims in those states, the court held there should be no single law to try the class under, thus undermining the class' predominance, according to the ruling.

The ruling should serve to be important for many technology companies, as it sits squarely at the intersection of patent and antitrust law, said Gary A. Bornstein, a partner who co-heads Cravath's litigation department.

While a patent holder typically can license covered technology and potentially exclude others from using it, cellular technology often adheres to internationally regulated industry standards that different companies incorporate into their products, a disparity that the technology industry has long wrangled over, he said.

"The court came down really strongly on the side of the patent holder in that dispute," Bornstein said. "It said that maybe there are limitations, but those are limitations that should be imposed by [patent law] and not by antitrust law stepping in and providing a big overlay."

The ruling should provide clarity to patent holders that they can depend on a well-established set of legal precedent pertaining to patent law when trying to understand their licensing rights, as opposed to concern that the federal government or classes of plaintiffs may try to cite antitrust law as a way to further limit the reach of their patent rights, Bornstein said.



"Those issues are going to be important in a lot of other industries, as the Internet of Things takes off, as we have connected cars and autonomous driving, the same standardized principles are going to apply across a whole new range of industries," he said.

Cravath also guided Robinhood Markets Inc. in the trading app's closely watched IPO. The company sold 55 million shares at \$38 apiece on the initial day of trading in July, at the low end of its expected range of \$38 to \$42. The stock rose as high as \$70 in early August but steadily declined in subsequent months, settling below \$15 in early February.

As part of the offering, Cravath worked with Robinhood as it developed a new product that allowed the company to offer IPO shares to its customers through its app at the same price and terms as those offered to institutional investors, according to the firm.

Cravath focused on ensuring that the new platform, known as IPO Access, complied with U.S. Securities and Exchange Commission regulations that cover the offering of shares to retail investors, said D. Scott Bennett, a partner with the firm.

"Historically, the way IPOs work is that big institutions could buy, while regular retail investors could not, because they don't have access," Bennett said. "Being able to provide their customers the ability to buy Robinhood stock on the Robinhood app in the Robinhood IPO was a very important consideration from the very beginning."

Cravath is also representing Robinhood in various litigation relating to its decision to temporarily restrict trading of several "meme stocks," including AMC theaters, BlackBerry and GameStop, following market volatility in early 2021.

A Florida federal court determined last month that Robinhood acted within the scope of its customer agreement by imposing a "position closing only" policy for several days on the stocks, a trading restriction that company customers contended crashed the stocks' price and left them with losses.

Looking ahead, Bornstein said the firm is representing Meta Platforms Inc. — the company formerly known as Facebook Inc. — in various antitrust matters. It is also working with the DFINITY Foundation — a nonprofit organization developing a public blockchain network — on litigation involving whether certain cryptocurrencies should be covered by longstanding securities regulations, he said.

"We are very, very active all across the technology space," Bennett said.

--Additional reporting by Bryan Koenig, Elise Hansen and Dave Simpson. Editing by Andrew Cohen.

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