

MVP: Covington's Alex Berengaut

By Anna Bongardino

Law360 (October 28, 2024, 12:09 PM EDT) -- Alex Berengaut of Covington & Burling LLP led a successful effort to block Montana's TikTok ban by scoring a preliminary injunction in federal court last November, earning him a spot as one of the 2024 Law360 Technology MVPs.

His biggest accomplishment this year:

TikTok's win was a significant feat, not only due to the stakes of Montana's S.B. 419 — which sought to ban the Chinese social media app within the state's borders — but also because the district court held that the statute exceeded Montana's authority and could infringe on free speech.

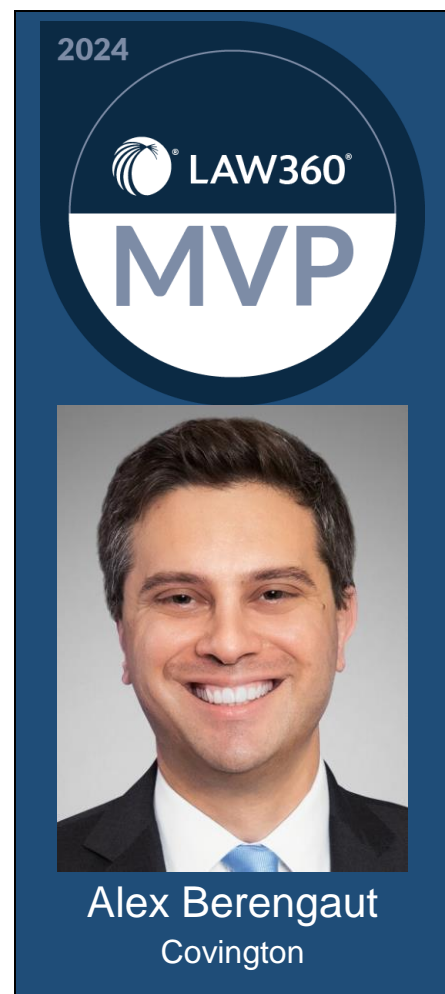
"That was important because of how disruptive that law would have been had it been permitted to go into effect," Berengaut said. "And also because of the legal grounds on which the court ruled, recognizing the First Amendment rights of TikTok users, among other things."

Berengaut and his team additionally had to work expediently given that the ban was set to go into effect at the beginning of this year, slightly more than a month after the court ultimately ruled in TikTok's favor.

"If the law was permitted to come into effect, even if we were to prevail in the case down the road, it would be too late," Berengaut said. "The harms that would be experienced in the meantime, including harms to the fundamental right of free speech, would not be things that could be remedied by the court if it later decided that the law was unconstitutional after it had been in effect for a period of time, so that put a premium on moving quickly."

His biggest challenge this year:

Not only were they racing against the clock to halt Montana's TikTok ban, but Berengaut and his team also faced the added difficulty of "demonstrating the full range of harms" that would result from the law, the attorney said, including that it would interfere with the sovereignty of Indigenous tribes, given that they are not subject to state regulations in the same way other entities are.



"Native American communities would be restricted from exercising their constitutional rights because of the overbroad reach of this legislation," Berengaut said. "That was a way in which this case presented unexpected challenges, but also opportunities to try to show different, equally important ways in which people were being injured by this law that we were trying to block."

Additionally, Berengaut's team argued that Montana's law was flawed because it sought to ban TikTok from being used within the precise boundaries of the state, even though it would have to rely on internet protocol geolocation, an imprecise metric, to do so.

"It's just difficult as a technological matter to enforce a law like that because our states have complicated borders," Berengaut said. "If you're trying to enforce a law based on this inherently imprecise information and data, then you're going to enforce it in places where you don't have power to enforce it."

Why he's a technology attorney:

The ever-evolving and innovative nature of the tech industry means that clients continue to face novel legal and regulatory issues, which keeps the practice area interesting for Berengaut.

"It's the intersection of those new technological products and services, and new regulatory issues on the one hand, combined with old venerable constitutional protections on the other, that makes it such a stimulating area," Berengaut said. "To make arguments about how the First Amendment, for example, applies to these new technological contexts, as we did in Montana, is a lot of fun."

What motivates him:

Berengaut said the "through line" of his work is ensuring that both tech companies and the government follow the law when new legal issues are raised and become subject to regulation.

"I see my role as helping to ensure that the rule of law is being upheld with respect to those efforts," Berengaut said. "And that, when the government wants to exercise legal authority, those authorities are exercised in accordance with constitutional protections."

Berengaut also told Law360 that, while his clients are passionate about innovating, they continue to be "mindful of their regulatory and legal obligations."

"It is a fulfilling area of the law to work in because you're helping these innovative organizations try to do what they do best," Berengaut said.

--As told to Anna Bongardino. Editing by Melissa Treolo.

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