Articles + Publications | December 7, 2022

Troutman Pepper State Attorneys General Monitor – December 2022

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REGULATORY OVERSIGHT Podcast

A LOOK AT THE UNIQUE FEATURES OF STATE AG INVESTIGATIONS AND WHAT COMPANIES SHOULD CONSIDER IN SELECTING OUTSIDE COUNSEL

By Michael Yaghi, Ketan Bhirud, and Stephen C. Piepgrass

In this episode of *Regulatory Oversight*, Stephen Piepgrass is joined by Nevada First Assistant Attorney General Kyle George and Regulatory Investigations, Strategy + Enforcement attorneys Ketan Bhirud and Michael Yaghi to discuss the use of separate litigation and settlement counsel for AG investigations. Kyle also discusses the unique nature of attorney general investigations as compared to traditional litigation, and the benefits of having deep, meaningful relationships among the AG offices.

Read more

Also, in case you missed it, make sure to listen to our recent episode on State False Claims Acts:

State of the Law: Contours of State False Claims Acts and How to Stay Out of Harm's Way

REGULATORY OVERSIGHT BLOG

Make sure to visit Troutman Pepper's *Regulatory Oversight* blog to receive the most up-to-date information on regulatory actions and subscribe to our mailing list to receive a monthly digest.

Regulatory Oversight will provide in-depth analysis into regulatory actions by various state and federal authorities, including state attorneys general and other state administrative agencies, the Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC). Contributors to the blog will include attorneys with multiple specialties, including regulatory enforcement, litigation, and compliance.

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THE FALLOUT FROM THE FTX COLLAPSE

PLAINTIFFS SET SIGHTS ON BANKMAN-FRIED AND OTHER CELEBRITIES WHO PROMOTED COLLAPSED CRYPTOCURRENCY EXCHANGE FTX

By Michael Yaghi, Ketan Bhirud, Chris Carlson, and Trey Smith

A lawsuit stemming from the collapse of multibillion-dollar cryptocurrency exchange FTX seeks to recover a billion dollars from FTX's founder and former CEO Sam Bankman-Fried, along with 11 paid endorsers, including Tom Brady, Naomi Osaka, Kevin O'Leary, Gisele Bündchen, Larry David, and Steph Curry. The plaintiffs allege the defendants were involved in a fraudulent scheme that used celebrity promotion to "funnel investors into a Ponzi scheme and to promote … unregistered securities."

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CYBERSECURITY AND PRIVACY UPDATES

AGS SUPPORT FTC'S POTENTIAL COMMERCIAL SURVEILLANCE AND DATA SECURITY CRACKDOWN

By Michael Yaghi and Abbey Thornhill

On November 17, 33 state attorneys general (AGs) submitted a comment letter to the Federal Trade Commission (FTC), supporting its contemplated new efforts in the corporate surveillance and data security space. The AGs' public support for the FTC's anticipated rulemaking suggests the AGs will continue to focus on data security issues in the coming new year.

Read more

VIRGINIA'S CONSUMER DATA PROTECTION ACT IS NOT THE COMMONWEALTH'S ONLY PRIVACY AND DATA PROTECTION LAW — NOR IS IT THE NATION'S FIRST

By Ketan Bhirud and Carson Cox

Virginia's new Consumer Data Protection Act will take effect on January 1, 2023, adding new consumer privacy rights, a broader interpretation of "personal information," a separate "sensitive data" category, and data protection assessment obligations into the mix with the commonwealth's three major pre-existing privacy and data protection laws as Virginia joins the growing ranks of states with comprehensive consumer data privacy acts.

Last year, Virginia became the second state after California to pass a comprehensive consumer privacy law — the Consumer Data Protection Act (CDPA or the Act). Modeled in part on California's law and the EU's General Data Protection Regulation, the CDPA will give Virginians several new consumer privacy rights over their "personal information," including the right to access, the right of rectification, the right to delete, the right to opt out, the right of portability, and the right against automatic decision making. Notably, unlike California's privacy law, the CDPA does not provide for rulemaking by the attorney general; therefore, compliance is determined based upon the Act itself, not by rules passed by a government office or agency.

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AG UPDATES

NEW AG ON THE BLOCK: MISSOURI ATTORNEY GENERAL ANDREW BAILEY

By Ashley Taylor, Clay Friedman, Stephen Piepgrass, Michael Yaghi, Ketan Bhirud, Avi Schick, Chris Carlson, Natalia Jacobo, Namrata Kang, Whitney Shephard, and Stephanie Kozol

With the election of Missouri Attorney General (AG) Eric Schmitt to the U.S. Senate earlier this month, Governor Mike Parson got another opportunity to pick the state's AG. Gov. Parson appointed Andrew Bailey, general counsel to the governor since 2021, to be Missouri's next attorney general until the term ends in 2024. Mr. Bailey joined the governor's office in 2019 as deputy general counsel before becoming the general counsel in 2021. Before joining the governor's office, Mr. Bailey served as a Missouri assistant AG, assistant prosecuting attorney for Warren County, and as general counsel for the Missouri Department of Corrections.

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BANKING GROUP SUES KENTUCKY AG DANIEL CAMERON OVER ESG INVESTIGATION

By Ketan Bhirud, Chris Carlson, and Carson Cox

Earlier this month, the Kentucky Bankers Association and its subsidiary Hope of Kentucky, LLC (Hope) sued Kentucky Attorney General (AG) Daniel Cameron in Kentucky state court to enjoin and declare unlawful Cameron's recent efforts to investigate the use of environmental, social, and governance (ESG) data in financial decision-making.

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PAYMENT PROCESSOR SETTLES WITH MASSACHUSETTS ATTORNEY GENERAL FOR PREMATURELY SENDING FEES TO A DEBT SETTLEMENT COMPANY

By Keith J. Barnett, Chris Carlson, and Trey Smith

On November 7, Massachusetts Attorney General Maura Healey announced a $600,000 settlement with Oklahoma-based payment processor Global Holdings. Attorney General Healey claimed that Global Holdings violated the Massachusetts Unfair and Deceptive Practices Act by sending debt settlement company DMB Financial LLC (DMB) its fees before the federal Telemarketing Sales Rule permits debt settlement companies like DMB to receive its fees.

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CANNABIS UPDATES

FEDERAL JUDGE FINDS NY CANNABIS RESIDENCY RULES LIKELY UNCONSTITUTIONAL AND DISCRIMINATORY AGAINST OUT-OF-STATE APPLICANTS

By Agustin Rodriguez, Christina Sava, and Michael Jordan

On November 3, Judge Gary L. Sharpe of the U.S. District Court for the Northern District of New York issued a preliminary injunction, blocking cannabis regulators from issuing marijuana retail licenses for five geographic regions across the state, while a constitutional challenge to the program proceeds.

Read more

BIPARTISAN MARIJUANA RESEARCH BILL HEADS TO BIDEN'S DESK

By Agustin Rodriguez, Nick Ramos, and Christina Sava

The Senate recently passed the Medical Marijuana and Cannabidiol Research Expansion Act (the Act) by a voice vote after the House of Representatives passed the bill with strong bipartisan support (325-95) last July. The Act is the first stand-alone marijuana legislation passed in decades and, according to some news sources, President Biden will likely sign it within the next two weeks. Historically, conducting research with Schedule I controlled substances has been subject to numerous administrative hurdles and onerous security requirements that have deterred many potential researchers. The Act amends key sections of the Controlled Substances Act (CSA) to ease some of those restrictions and to facilitate research on marijuana and its potential therapeutic benefits, without changing marijuana's designation as a Schedule I controlled substance.

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TTB UPDATES

TTB SEEKING COMMENT ON POTENTIAL CHANGES TO TRADE PRACTICE REGULATIONS

By John West and Nick Ramos

On August 2, 2021 and March 3, 2022 we reported on Executive Order 14036 (E.O. 14036) and the subsequent Treasury report entitled, "Competition in the Markets for Beer, Wine, and Spirits" (Report), which, among other things, directed the Alcohol and Tobacco Tax and Trade Bureau (TTB) to consider: (1) initiating a rulemaking to update its trade practice regulations; (2) revising or rescinding any regulations that "unnecessarily inhibit competition"; and (3) "reducing any barriers that impede market access for smaller and independent brewers, winemakers, and distilleries."

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Our Cannabis Practice provides advice on issues related to applicable federal and state law. Marijuana remains an illegal controlled substance under federal law.

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