

MVP: Jenner & Block's Dean Panos

Law360, New York (December 15, 2017, 2:53 PM EST) -- Jenner & Block LLP's Dean Panos is known for helping food and beverage giants prevail in challenging litigation, and the past year has been no exception, with the partner notching big victories for the likes of Kraft and Mondelez to land among Law360's 2017 Food & Beverage MVPs.

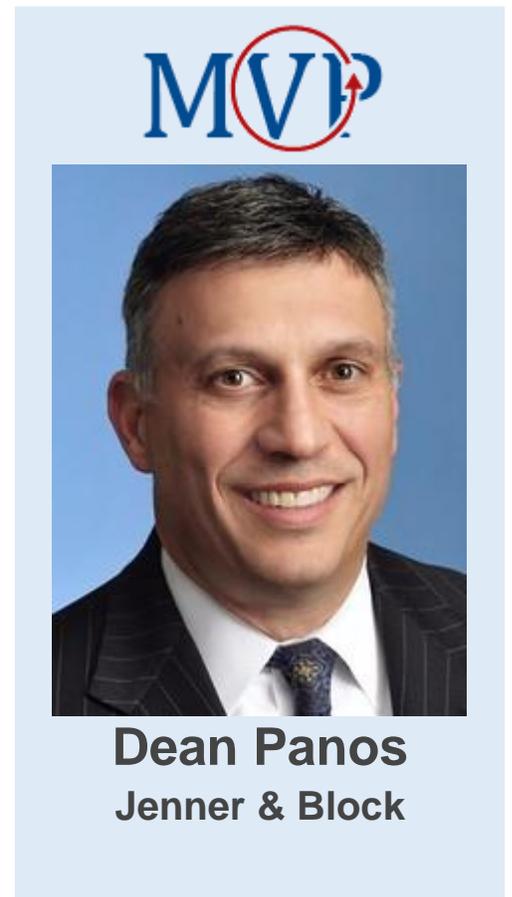
HIS BIGGEST ACCOMPLISHMENT THIS YEAR:

Consumers went after a slew of popular products this year, attacking the labeling of iconic items in class actions across the country. But Panos and his firm's food and beverage team refused to back down, securing a string of wins that included getting cases dismissed at the outset and winning key class certification decisions.

"That was really great because I think oftentimes food clients [who are] defendants in class actions feel like the deck is a little stacked against them sometimes based on certain broad statutes or interpretations of those statutes by the courts, and they feel like it's hard to just get out from cases even when they should," he said.

For Panos, one of the year's victories that really stood out was a June decision in a California federal court suit accusing Kraft Heinz Co. of misleading consumers by advertising fat-free cheddar cheese that contains artificial coloring as "natural." Following an evidentiary hearing, U.S. District Judge John A. Kronstadt reversed course and decertified a damages class, concluding that the proposed damages model was insufficient.

That was an important decision because plaintiffs have recently been offering a number of theories about how to calculate classwide damages, particularly in consumer fraud cases, that have won over some courts, Panos explained.



“It was a good accomplishment that we got a federal judge to hear the evidence on that — instead of just looking at the papers, but actually listening to the real experts testify — and understand why those damages that plaintiffs model in these cases really are not satisfactory by the law,” he said.

HIS BIGGEST CHALLENGE:

The battle in these sorts of labeling suits and similar class actions is trying to make the court see that many of the claims being advanced are weak and companies shouldn't have to defend lawsuits that are implausible on their face, Panos said.

“Courts obviously have to apply standards when ruling on motions to dismiss, and your job as the lawyer, and the challenge, is to show that the standard for certain claims really can't be met, that it's just implausible, and the courts should not be hesitant to dismiss those claims right at the outset,” he said.

It's no easy task, but Panos and the Jenner & Block team have managed to turn the tide in a lot of courts recently, securing important decisions like a first-of-its kind dismissal handed down in New York federal court in October 2016.

The decision came out of a proposed class action accusing Mondelez International Inc. of packaging its Sour Patch Watermelon Candy in a way that dupes consumers into thinking the boxes contain more candy than they actually do.

The matter is one of a sea of “slack-fill” lawsuits that have plagued food and beverage makers in recently, and courts previously had declined to dismiss these claims at the pleading stage, according to Jenner & Block.

But Panos moved to dismiss Jose Izquierdo's suit, arguing that the packaging wasn't misleading and the plaintiff failed to allege a cognizable injury, among other contentions. And he won.

HIS PROUDEST MOMENT:

Jenner & Block's food and beverage attorneys have been blessed to represent industry leaders in a number of high-stakes matters, which has helped the group become a sort of “destination practice” for clients seeking representation for their most important and sophisticated work, whether that be a piece of commercial litigation, a governmental investigation, a class action or transactional work, Panos said.

It is a reputation they have worked hard to build, and a particularly proud moment for Panos was seeing all that effort pay off this year in the form of unexpected calls from in-house counsel for companies the firm had no relationship with.

Some called to applaud impressive decisions the attorneys had landed and ask to hear their ideas on how to handle similar litigation. Others called to seek representation, saying their counterparts at other companies had told them they had to hire Jenner & Block.

“It was really great this year in particular, after winning a bunch of cases or just word of mouth through other in-house lawyers, that we got some calls from some companies that we didn’t have a relationship with, and now, we represent them,” he said.

HIS ADVICE FOR FOOD AND BEVERAGE ATTORNEYS:

In order to succeed, a food and beverage attorney has to understand the industry, Panos said.

Even as an outside lawyer, he said, attorneys should do everything they can to learn the ins and outs of the business, from how the food and beverage manufacturers operate to how they make money.

“Really understanding the industry is critical because you have to be able to present your client’s position in the context of the way in which they really operate their businesses,” he said. “And by understanding how they operate their businesses, you also understand the challenges they face when they get hit with a piece of litigation.”

That helps attorneys learn what value they can provide and cultivate relationships where clients see them as a partner, rather than just a “hired gun” for the purposes of walking into a courtroom, Panos said.

— *As told to Shayna Posses*

Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2017 MVP winners after reviewing more than 1,000 submissions.