

Wiley Rein Secures Critical Appellate Injunction for the Wireless Industry

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In another First Amendment victory for the Wireless Industry, the U.S. Court of Appeals for the Ninth Circuit enjoined the City of San Francisco's requirement that retailers distribute "fact sheets" that are designed to warn consumers about unsubstantiated dangers from RF energy emitted by cell phones.

CTIA-The Wireless Association,[®] represented by Wiley Rein as lead counsel, filed an emergency request for an injunction pending appeal in the Ninth Circuit, to prevent cell phone retailers from having to disseminate the City's "fact sheet" in retail stores beginning on December 1, 2011. The "fact sheet" contained numerous assertions about cell phone safety and urged consumers to "Limit Cell Phone Use by Children" and to turn cell phones off when not in use. CTIA argued that this constituted government-compelled speech in violation of its First Amendment rights and that its members would suffer irreparable injury to their goodwill, reputations and product if the San Francisco Ordinance was allowed to go into effect.

In granting the injunction, the Ninth Circuit agreed that the case presented important issues regarding the First Amendment and that the obligation to distribute the "fact sheet" should not take effect until the court was able to fully consider both CTIA's appeal and the City's cross-appeal. CTIA's opening brief is now due next month, and argument of the appeal is expected in the spring of 2012.

Last month, a federal district judge in San Francisco agreed with CTIA that the City's regime and its materials were unconstitutional. The district court found that City's materials were misleading and alarmist as promulgated, so the City could not require retailers to post and disseminate them. But the district court judge allowed the city to

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compel distribution of a modified “fact sheet” reflecting the judge’s suggested revisions.

The lower court’s ruling is the first case to approve a consumer warning or advisory where there is “nothing more than the possibility that an agent may (or may not) turn out to be harmful.” As noted above, both CTIA and the City have appealed portions of the District Court’s ruling.

Wiley Rein’s Andrew McBride, Josh Turner, Megan Brown and Brendan Carr are among the counsel for CTIA in this matter.