

Q&A with Chris Cole

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By *Christopher Cole*

[Background]

Before law school, your academic history shows a strong interest in science, with a bachelor's degree in biology from Yale University and a masters in marine biology from the University of Miami. Why did you decide to pursue the legal profession?

I grew up across from the marina and spent every free moment on the water or next to it. That's probably why I went to Miami to study marine biology. It was predestined.

However, I always had a strong interest in public policy. My interest in science – especially marine stuff – motivated me to find ways to protect what I was studying. While scientists are critical, so are lawyers and policymakers. I felt I'd be a better lawyer than scientist at the end of the day, and could probably have a bigger impact on what I cared about by becoming a lawyer. I think that has been true and, for someone like me who has pretty broad interests, it keeps me interested perpetually.

Legal Practice

You have a varied practice that touches on multiple industries. Tell us about your practice and the types of matters you handle.

I can shorten it – I help companies say what they want to say and protect themselves from those who would try to hurt them by lying. In practice, my matters range from bringing and defending false advertising lawsuits (whether competitor lawsuits or class actions) to advising companies on how best to communicate and support their product claims. Along the way, I have become a sort of "Mr. Fix-It," helping companies navigate complicated regulatory issues about their (or competitors') communication issues that don't necessarily fit neatly into a single bucket. More recently, that has

involved a lot of environmental, social and governance (ESG) work, which is a quintessential interdisciplinary topic.

Have the skills you developed through your scientific studies contributed to your practice, in terms of helping understand and address some of the technical aspects of your cases?

Many lawyers are technophobes, which is too bad. I was trained from undergraduate into graduate school on how to read scientific studies, the fundamentals of “good science,” and in statistics. All of these things are crucial to any science-based case, whether advertising, patent or even economics. Another thing that has helped me is that I truly like and appreciate scientists, who are often our experts. Experts are people too! I get along with them and am typically viewed on any case team as a sort of “expert whisperer.” The most important characteristic is to be curious about everything – don’t be afraid to ask even seemingly stupid questions and let them teach you.

Many of your clients are big-name brands that are featured on ads that are widely seen by the general public. Is there a matter that stands out for you because of its impact on other advertising-related cases or disputes?

Some of the big false advertising Lanham Act cases that I have been involved in have made law that has been important to industry in general and this area of the law in particular. For example, in a variety of cases for AT&T, we have established the industry rules governing how to communicate properly about coverage, reliability and data speed performance – all of which are used in just about every ad you see for a phone or cable company these days. For Molson Coors (and Miller Brewing before it), we have established some law that cements liability for literally false claims, even ones that are corrected pretty quickly.

I have also been quite active in the American Bar Association's (ABA) Antitrust Law Section, which is a venue for thought leadership in the area, that brings together a “who's who” of practitioners, scholars and regulators. I have written chapters on Lanham Act law and on claims substantiation for leading ABA treatises. I also work closely with one of the world's leading experts on sensory substantiation (for example, “tastes better” claims) and, through a course sponsored by the expert, together we have helped train about a decade's worth of professionals in the field on claims support and the law.

[Looking Ahead]

The advertising industry is an ever-changing landscape. From your perspective, have laws and regulations kept up with shifts in the industry? And do you anticipate any noteworthy legal developments in this area in the upcoming year?

I love working in this area because it is dynamic and relevant to our everyday lives. However, the law always seems to be a step or two behind this ever-changing landscape, which is perhaps inevitable when you have all of these talented, creative and imaginative people working to advance business. So, part of what we try to do is peer around corners and anticipate risks for our clients.

In terms of what to expect in 2023, my best guesses include the following:

- Class actions will continue to increase, which will touch every consumer-facing industry.
- The Federal Trade Commission (FTC) will become even more aggressive, seeking to publish new rules and bring new enforcement matters as the FTC eyes a potential change of administration in 2024 and tries to rush as much through as it can in the next two years.
- There are likely to be changes to Section 230 of the Communications Decency Act, which broadly speaking immunizes internet platforms from liability relating to the posting of user-generated content. This question takes on added urgency given the political importance of Twitter, Facebook and Instagram, among others.

Brands and companies are increasingly prioritizing ESG initiatives, which is an area in which you have considerable experience. What ESG-related issues are you seeing in the advertising industry and, looking ahead, what emerging issues do you foresee?

The FTC will be updating its Green Guides in 2023 and 2024. Those are fundamental to the ad industry. I expect we will see at least changes to definitions of “recycling,” “carbon offsets” and “sustainability.” Further, companies relying on carbon offsets for support of their net-zero pledges need to pay close attention, as that will be closely reviewed by the FTC and others.

The number of ESG-related class actions continues to tick up. I predict we will see many more in 2023, as the rules of the road are in flux.

[Personal Side]

Your father, Richard Cole, was a longtime executive in the fashion industry. Notably, in the late 1960s, he was named president of Lady Manhattan, where several top designers got their start, including Donna Karan, Tommy Hilfiger, Halston and Perry Ellis. Did your father share any lessons from his profession that have influenced your career path and practice through the years?

My dad spent a career in the fashion industry and indeed married a model (Ms. Sweden), my mother, Birgitta, who is still alive today. Of the many things I admired about my father was his dedication to honest-dealing and integrity, and his early and broad acceptance of people in the industry who were

LGBTQ. He was an early proponent of equality for everyone, even though he came from a generation that largely didn't agree with that.

In my early years in the law, I would visit our New York office and always have lunch with my dad in the Garment District. It struck me how he seemed to know everyone by name, and they knew him – from the guy pushing the rack of clothes down Broadway to the waiter in the little Chinese restaurant we would always visit. He prided himself on knowing the guys on the loading dock who could tell him whether the shipment was really on time, and if not, exactly why not. It's trite, but that always impressed on me the importance of appreciating the contributions of everyone, not just the top of the company.

What are your passions outside the office?

I am an avid amateur chef. What can I say, I like to eat. And, to work off that food, I am a workout fiend and dedicated squash enthusiast. I have three boys, all of whom are in college or just graduated. I love seeing how they are flourishing into adults.

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