

Amid IRS Case, Microsoft Touts Bartlit Beck in Surface Ad

By Scott Flaherty
October 12, 2015

Talk about product placement. When Microsoft Corp. wanted to show off its Surface tablet computer in a new online marketing campaign, the company looked no further than one of its own outside lawyers. It chose Chicago-based litigator Brian Prestes, a young Bartlit Beck Herman Palenchar & Scott partner who just happens to be trial counsel for Microsoft in a bitter standoff with the Internal Revenue Service over a multibillion-dollar tax audit.

Microsoft unveiled the result on Oct. 2: A two-and-a-half-minute, sleekly produced advertisement that features Prestes as he travels around Chicago between his home and Bartlit Beck's downtown offices. His real-life wife and daughters co-star in the video, as does his German shepherd.

The video doesn't mention the IRS case. Prestes' Surface tablet, on the other hand, is never out of reach.

Selling Microsoft tablets is the video's obvious goal. But it also functions as free advertising for



Bartlit Beck partner Brian Prestes in a still image from a new online Microsoft Surface advertisement.

Prestes and Bartlit Beck, who weren't compensated for their time. And it gives the firm a chance to trumpet its admiration for an important client's product—something other law firms have taken pains to achieve in the past.

In 2010, for example, Day Pitney reportedly decided to switch to Pepsi Co. products whenever the firm offered snacks or lunches at certain offices, since the firm counted Pepsi as a client. An *Above The Law* article on Day Pitney's Pepsi switch also described similar product loyalty policies among large firms, including a decision by Wachtell Lipton

Rosen & Katz to rely on firm client AT&T to provide its lawyers' cell phone service.

Prestes says the arrangement that led to his advertising debut this month is different.

Bartlit Beck, he explains, is a participant in an "early adopter" customer program under which Microsoft offers the firm advance access to some of its new products in exchange for feedback. In addition to the Surface Pro tablet, Bartlit Beck has also had a sneak peek at the Surface Hub, a Microsoft product with a massive touch screen and other features designed to facilitate professional conferencing.

"What we're doing in coordination with Microsoft is getting an early look at the products and putting them through their paces," Prestes says.

In the video, Prestes describes in voice-over narration how various features on the tablet help maximize his time, allowing him to be a more efficient lawyer while also "balancing home life, work life, four kids and a dog."

"At Bartlit Beck, we pride ourselves on being storytellers—taking a case and developing a theory of that case in themes that will resonate with a judge or with a jury," Prestes says in the advertisement. "My use of the Surface benefits my clients in a number of ways."

Prestes' personal involvement started when Microsoft sought feedback from a lawyer who was actively using the Surface tablet. Prestes, who had started using the device the week it came out, agreed to let a Microsoft film crew follow him around for a day.

Nearly everything in the video—including breakfast with his family, his commute and his time at the office—reflects what he does on a normal day, Prestes says.

"That's my real life, those are my real kids, that's my real German shepherd, that's my Surface," he said. "This isn't an advertisement, at least as I think of that term."

For Bartlit Beck, the video is the latest step in a long and evolving relationship with Microsoft. In 2001, founding partner Philip Beck took over as outside counsel for the U.S. Department of Justice in a high-profile antitrust case accusing Microsoft of misusing its monopoly position and unlawfully bundling its Windows operating system with software such as the Internet Explorer Web browser. Beck came into the litigation during the remedial phase of the Microsoft antitrust case, replacing the Justice Department's prior outside counsel, David Boies of Boies Schiller & Flexner.

Within the past few years, however, Bartlit Beck has struck up friendlier ties to the technology giant. In the IRS case, Prestes and Beck are defending Microsoft in Seattle federal court, where the agency's outside lawyers at Quinn Emanuel Urquhart & Sullivan filed an enforcement action.

The IRS claims that Microsoft has refused to provide documentation relevant to a tax audit—one of the largest the agency has ever conducted—on the company's income in 2004, 2005 and 2006.

The case grew out of a broader IRS investigation into technology companies' transfers of certain "intangibles," such as software, trademarks and marketing assets, to foreign affiliates who face lower tax rates. As part of its defense in court, Microsoft has attacked the IRS' hiring of Quinn Emanuel, an argument that has also gained support from some members of Congress.