

Advertising and Marketing

Creative and cutting-edge advertising strategies are necessary to set your business apart in a competitive industry. With the right legal team, you can navigate evolving consumer protection regulations and mitigate the threat of government investigations or competitor challenges.

About

Advertisers seeking guidance managing their business and compliance challenges in an increasingly complex regulatory environment turn to Kelley Drye for full-service representation.

We help global brands and *Fortune* 500 companies ensure that their marketing, advertising, and promotions are effective and compliant with federal and state laws and regulations, broadcast network and industry self-regulatory standards, and evolving best practices for traditional and new media marketing.

In the event of litigation, you can count on a team of highly respected courtroom-tested litigators with deep and ready knowledge of advertising law. We advocate for you in challenges across the spectrum, including government investigations, competitive advertising claims in Lanham Act suits or challenges before the National Advertising Division (NAD), class action claims in state or federal court, and federal and state agency rulemakings.

We work side-by-side with our clients to help avoid regulatory scrutiny, to persuade regulators to close investigations, and to obtain favorable outcomes in settlement and litigation.

“A cross-practice team blending regulatory and litigation experience across all areas of advertising and marketing, privacy, retailing practices, telephone and text marketing, fraud, and product liability.”

– *Law 360*

A Robust Advertising and Privacy Team

Kelley Drye’s Advertising and Marketing practice group—in close coordination with our [Privacy and Information Security team](#)—offers guidance on all aspects of your integrated marketing campaigns. Our team of more than two dozen dedicated professionals offers breadth and depth of experience regarding advertising and marketing, privacy and data security, and digital platforms and technology. We draw upon the many connections between these areas as we serve our clients.

Many of us are former high-level officials from the Federal Trade Commission and State AG offices, and others have decades of experience practicing before these agencies. Further, we have strong working relationships with current personnel at federal and state agencies, which allows us to anticipate moves and effectively advocate for your interests.

Compliance and Counseling

Kelley Drye's Advertising and Marketing practice reviews traditional and digital advertising and promotional materials for truth in advertising, claim substantiation, use of intellectual property, and compliance with consumer protection rules. We evaluate, substantiate, and, where necessary, help you modify advertising claims, providing risk management guidance to minimize the potential for competitor, consumer or agency challenges, and achieve your competitive goals.

Experience

New Media Marketing

- Assisted various clients with contests involving consumer-generated content, including contests where consumers were invited to create commercials, develop software, and even design sneakers. We drafted rules for the promotions, helped protect our clients from problematic content, and secured rights to the winning submissions.
- Assisted various clients in designing sweepstakes that allow consumers to enter by sending text messages via their mobile phones. We helped these clients structure the promotions in such a way as to avoid the lawsuits that have recently plagued other companies that have offered text-to-win sweepstakes.
- Advised clients on the risks associated with allowing consumers to post content on the clients' sites and drafted terms of service designed to protect the clients from the potential liability associated with content posted by consumers.
- Advised clients on the risks associated with employee blogs and helped clients develop internal policies addressing blogging by employees in order to minimize legal exposure to the company.
- Counseled several clients, including a *Fortune* 500 athletic apparel company, a national wireless telecommunications carrier, and a children's retailer on issues in product design and services that involve online/wireless gaming and social media components.
- Provide consumer protection counseling to several major mobile application developers and marketers, including privacy-related counseling.

Advertising Transactions

- Assisted a Fortune 100 retailer in drafting and negotiating a comprehensive media advertising agency of record agreement for one of the top media spenders in the United States.
- Assisted a Fortune 100 automotive company in drafting and negotiating comprehensive global creative and media advertising agency of record agreements.
- Assisted a leading travel company in drafting and negotiating creative and media advertising agency of record agreements covering the United States, Central and South America, and Southeast Asia.
- Helped numerous companies in drafting and negotiating agreements for the development and licensing of advertising technology services, including content and software development, CRM platforms, data analytics, interest-based advertising, and multi-platform and device tracking.

- Helped various companies in drafting and negotiating sponsorship agreements with sports teams, music venues, festivals, and other major events.
- Drafted and negotiated talent agreements with actors, athletes, musicians, and other celebrities.
- Assisted various companies in preparing influencer agreements for a variety of campaigns in social media.
- Assisted numerous major retailers in negotiating agreements for the development of mobile applications.
- Worked on agreements covering a broad range of promotions, including sweepstakes, contests, and other incentives.

Multi-level and Direct Sales Marketing

- Represented major direct seller in investigation and negotiations with the FTC arising out of alleged unfair and deceptive acts concerning its multi-level marketing program and how it represented its business opportunity. Successfully negotiated settlement that permitted the company to continue to operate and the case was closed.
- Conducted compliance audit of multi-level marketing company to evaluate consumer protection risks, including those related to product and income claims and disclosures, marketing plan incentives, and distributor oversight.
- Regularly counsel direct sales companies with regard to multi-level marketing and consumer protection compliance.
- Represent multi-level marketing companies in regulatory investigations and contested matters.
- Represented multi-level marketer during FTC Part 2 investigation of its practices. Investigation was successfully closed despite complaint recommendation by FTC staff.

Consumer Privacy and Data Collection

- Provide consumer protection counseling to several major mobile application developers and marketers, including privacy-related counseling.
- Represented a diversified mass media company on children's privacy issues and submitted comments on behalf of the client in response to the FTC's proposed revisions to the Children's Online Privacy Protection Rule.
- Provided privacy policy training and counseling necessary for a multinational electronics corporation to facilitate the launch of a VoIP product.
- Represent a group of prominent doctors who own and run a teleradiology business in a dispute with a major university, alleging invasion of privacy, interference with a contract and interference with prospective business advantage. Additional allegations include misappropriation of trade secrets and unfair competition in violation of § 17200.
- Assisted a major retailer with a gap analysis for privacy compliance. This involved dividing the business units into discreet parts with similar privacy compliance issues. Our analysis then

cataloged every applicable privacy law in the United States (federal and state) in the form of easy-to-follow questions for the business units to answer, which allowed the legal department to identify compliance gaps and most efficiently focus resources on those areas that needed it most.

- Represented a financial institution in an investigation by the FTC concerning an information security breach the business incurred, and whether the company's business practices complied with Section 5 of the FTC Act, the Gramm-Leach-Bliley Act (GLBA), the GLBA Safeguards Rule and the GLBA Privacy Rule. The case resolved with a settlement that included relatively narrow injunctive relief (compared to other similar FTC settlements), and no monetary damages or penalties.
- Counseled a *Fortune* 50 computer and technology company on global privacy and data security compliance, including assisting on compliance with the various U.S. state developments, enforcement trends and strategies for managing vendor relationships worldwide. Our work included drafting appropriate contractual language and developing and counseling on oversight and monitoring procedures for a company that maintains a very large and diverse set of vendors that raise varied data security compliance issues in the European Union and Asian countries in which they do business.
- Worked with an international retailer to review and certify its data practices under the Safe Harbor program to permit it to lawfully transfer its European Union employee and customer data to the United States.
- Assisted a major consumer electronics retailer in connection with implementing a behavioral advertising initiative.
- Regularly advise a *Fortune* 1000 clothing retailer on privacy and data security matters, including working closely with the company in designing a tailored privacy and data security compliance program that meets federal and state regulatory requirements.
- Provide comprehensive privacy and data security advice for a major online retailer. This includes advising on compliance with the Children's Online Privacy Protection Act, CAN-SPAM, and relevant FTC and state consumer protection, privacy, and data security laws.
- Counseled a *Fortune* 500 clothing manufacturer on enterprise-wide data security compliance. This included strategies for data protection compliance, legal policies, managing vendor relationships, negotiating privacy and data security terms in vendor contracts and exercising privacy and due diligence in the company's acquisition of new businesses, data assets and service providers.
- Counseled numerous clients - retailers, financial service entities, and telecommunications providers - on appropriate responses to a data breach event in accordance with legal obligations and business risks.

Related Services

Federal Trade Commission
State Attorneys General
NAD and NARB Challenges
Marketing and Promotions
Direct Sales and Multi-level Marketing
Privacy and Information Security

Antitrust
Consumer Product Safety Regulation

Contacts

[Donnelly L. McDowell](#)
dmcowell@kelleydrye.com