

Consumer Class Action Defense

Kelley Drye's Consumer Class Action Defense team applies the right strategies in the right circumstances to achieve the right results for clients—time and again.

About

Consumer class actions have become a multibillion-dollar headache for consumer brands—and they are on the rise in jurisdictions across the country. Not only do these cases pose the risk of enormous economic damages, injury to brand reputation, and loss of key corporate assets and relationships, they also divert valuable time, management focus and company resources away from core business objectives.

We defend companies across a range of industries—consumer products; technology and telecommunications; fashion and retail; financial services; entertainment and media; and food, drug and dietary supplements, to name a few—in state and federal consumer class actions involving advertising and labeling claims, deceptive trade practices, promotional “sale” pricing practices, telemarketing and the Telephone Consumer Protection Act (TCPA), Fair Credit Reporting Act (FCRA), call monitoring practices, rebate policies and e-mail marketing campaigns. We also have significant experience defending privacy-related consumer class actions, including those brought under the California Invasion of Privacy Act (CIPA), the Video Privacy Protection Act (VPPA), and other state and federal privacy statutes.

Strategic Case Control from the Outset

We provide clients with strategic case control from the beginning of the suit to the end. With nationally acclaimed consumer protection and regulatory practices, Kelley Drye offers clients the subject-matter-specific counsel of a boutique consumer protection practice with a true fluency in the nuances of state and federal consumer protection laws, bolstered by the experience of a 100-attorney bench of accomplished litigators providing practical, innovative—and proven—class action defense strategies.

We have been recognized as “Distinguished” and “Standout” for Class Actions in BTI Consulting Group’s “Litigation Outlook” reports and highlighted in *Legal 500* as “smart lawyers who are fair, knowledgeable, and pleasant to work with” and who “have strong experience and knowledge of the consumer packaged goods industry.” We were also named by *Law360* as a “Consumer Protection Practice Group of the Year,” which recognized victories such as defeating comparison price claims for two large retailers and successfully defending those dismissals before both the First and Sixth Circuits; defeating at the pleading stage proposed class actions against multiple consumer products companies alleging consumer fraud and privacy/TCPA violations; and beating back other plaintiffs’ motions for class certification.

We conduct early case assessments that recognize these lawsuits as business problems to be solved and position clients to achieve successful resolution in line with their goals in smarter, more efficient ways. Our courtroom-tested litigators have an outstanding record of success securing dismissal of class claims on dispositive motions before discovery, defeating class certification and dispatching the

claims of class representatives in some of the most plaintiff-friendly jurisdictions in the country, including courts in California, Illinois, New York, New Jersey and Texas.

Parallel Actions

Consumer class actions often proceed in parallel with regulatory and law enforcement agency investigations of the same claims or practices. Kelley Drye attorneys have well-earned credibility with government agencies like the Federal Trade Commission (FTC), the Federal Communications Commission (FCC) and state attorneys general. We have negotiated the favorable conclusion of dozens of investigations and enforcement actions over the past decade, and have proactively used the primary jurisdiction doctrine in class action litigation to reign in expansive regulatory proceedings.

Experience

Consumer Products and Retail

- Won denials of class certification in various class actions in federal courts in California, Florida, Illinois, and Nevada (among others), including in actions brought against national banks and other large companies that involved potentially millions of class members.
- Represented an international manufacturing company in Connecticut federal court where the district court denied certification after finding common issues did not predominate, and then also granted summary judgment on the plaintiff's individual claim.
- Represented an international real estate company in a vicarious-liability class action lawsuit in Colorado federal court and achieved a dismissal with prejudice of a nationwide TCPA complaint for failure to state a viable theory of liability.
- In a West Virginia based multi-district litigation (MDL), secured summary judgment for international manufacturing companies on grounds of vicarious liability, and preserved the win at the Fourth Circuit.
- Represented a national mortgage company in successfully settling claims with over 2 million consumers, and represented an insurance company settling claims involving over 20 million allegedly illegal faxes.
- Secured dismissals of various class actions brought in federal court by successfully enforcing arbitration provisions and/or challenging jurisdiction, in cases involving national banks, financial services organizations, insurance providers, and retailers.
- Obtained full dismissal with prejudice of consumer class action claims alleging deceptive pricing by a major national retailer. In 2017, the First Circuit affirmed the dismissal of the suit.
- Represented a family-owned electronics, appliance and mattress retailer in a putative class action brought under New Jersey's Truth-in-Consumer Contract, Warranty and Notice Act (TCCWNA), a once-obscure statute that recently has become the pick of New Jersey plaintiffs' bar across a spectrum of businesses. We [secured a rare pre-discovery dismissal](#) of the dispute.
- Obtained dismissal with prejudice of all class claims in consumer class action alleging deceptive pricing by emerging online retailer with a multibillion-dollar valuation. In 2017, the Sixth Circuit affirmed dismissal of the suit.

- Achieved dismissal, with prejudice, of a consumer class action complaint against a prominent luxury retailer alleging the retailer violated California law. Successfully argued that the plaintiff had not suffered any damages as a result of the retailer's actions and therefore did not have standing to pursue claims.
- Representing an electronics retailer in a proposed class action alleging violation of the Fair and Accurate Credit Transactions Act (FACTA) and New Jersey's Fair Credit Reporting Act.
- Represented a national department store chain in several consumer class action lawsuits alleging violations of the TCPA. Several consumer product companies rely on our TCPA experience to efficiently and cost-effectively defend these types of actions.
- Defending a sports equipment manufacturer against state consumer protection and false advertising claims relating to performance claims regarding its football helmets.
- Represented a sporting goods retailer in the Western District of Kentucky in two putative class actions alleging a "bait and switch" advertising campaign.
- Obtained dismissal of a putative class action challenging coupon redemption policies for a children's apparel retailer.

Food, Dietary Supplements and Cosmetics

- Representing a global food company against false advertising claims brought by the FTC, as well as several class action lawsuits throughout the country.
- Represented the maker of cosmetic consumer products, in a class action lawsuit. The suit claimed that the company's marketing was misleading and asserted claims of unjust enrichment, breach of contract and violation of the New Jersey Consumer Fraud Act. Negotiated a favorable settlement that was upheld during a fairness hearing over a vehement challenge by an objector.
- Negotiated a quick, cost-effective settlement for a marketer of personal care brands in a class action following an FTC investigation for a personal care hair product alleging false advertising in violation of the Arkansas Deceptive Trade Practices Act.
- Represented a pet care product manufacturer in five consolidated putative nationwide class actions concerning insecticides used in the client's flea and tick collar products. Obtained a nominal settlement and dismissal of individual claims prior to class action certification after extensive motion practice.
- Successfully represented a cooperative association of 450 family-owned dairies, maker of the best-selling brand of butter in the Western U.S., in a class action filed in the Los Angeles Superior Court, alleging that the labeling of certain of their dairy products were false and misleading in violation of the California Unfair Competition statutes, as well as the Consumer Legal Remedies Act. The judge dismissed the case with prejudice on federal preemption grounds.
- Represented a nationwide quick service restaurant in a consumer class action suit brought in federal court in Maryland, alleging violations of the TCPA. Negotiated settlement after mediation.

- Representing one of the largest retail branded pasta manufacturers in a consumer fraud class actions in New York over allegations related to “all natural” claims and the quantity of product in its boxes.
- On behalf of a beverage manufacturer, obtained favorable resolution of claims regarding the packaging and labeling of energy drinks. The plaintiff, on behalf of a class of all purchasers of our client’s products, alleged that the labeling of our client’s beverages contained false and misleading information. Settled at the pleading stage.

Communications and Technology

- Following two trials, a successful appeal permitting a third trial and a subsequent mediation, we successfully settled a consumer class action filed in California against a communications company that alleged violations of California’s consumer protection laws.
- Led the defense of more than 30 class action cases brought against a leading wireless carrier. In several related matters, we successfully petitioned for multidistrict litigation over the objections of several noted plaintiff class action firms, transferring over twenty cases to the Western District of Missouri.
- Represented two Internet service providers in several class action suits filed in Florida, California, Oklahoma, Illinois and New Jersey. Not one case advanced to class certification, let alone a decision on the merits.
- Obtained dismissal of a class action complaint alleging deceptive billing practices for a wireless communications company.
- Obtained denial of class certification after evidentiary hearing in a suit alleging nonpayment of promotional rebates for a *Fortune* 50 computer and technology company.

Entertainment and Media

- Representing a leading film studio and film distributor in a civil rights class action involving a hit show.
- Representing a leading video game developer in a consumer class action involving alleged claims of violation of California’s false advertising and unfair competition laws in connection with the release of a video game.
- Worked to secure insurance coverage for a client in connection with a class action brought against the studios and talent agencies by Hollywood writers in an age discrimination suit.
- Defended several entertainment lawsuits that included unfair competition and false advertising claims, in connection with the failure to credit joint copyright holders or trademark owners with regard to entertainment works.

Related Services

Litigation
 Telephone Consumer Protection Act (TCPA) Defense
 Advertising and Marketing

Contacts

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