

# Direct Sales and Multi-level Marketing

Kelley Drye has resolved some of the biggest cases in the history of the direct sales industry and provides industry clients with across-the-board legal support.

## About

We work with direct sales and multi-level marketing companies, helping them and their distributors achieve their business goals in compliance with applicable consumer protection laws. In this area of increased regulatory scrutiny from the FTC and state attorneys general, we help clients evaluate and implement meaningful compliance measures related to sales methods, compensation structures and claims practices.

In the event of a government investigation or consumer class action, the Kelley Drye team designs legal strategies that achieve the best possible outcomes for our clients and preserves the value of their brands.

The group is particularly adept at helping direct selling companies with:

## Direct Sales and Multi-Level Marketing Compliance Counseling

Kelley Drye helps clients manage their direct selling and multi-level marketing programs in light of regularly evolving consumer protection standards. Our attorneys have extensive experience evaluating compensation plans, direct sales methods, distributor rules and practices, and refund and buyback policies in light of recent enforcement and litigation trends. Kelley Drye attorneys provide counseling on how to minimize risk of enforcement and litigation consistent with business goals, including by holistically assessing a company's compliance practices.

## Business Opportunity and Income Claims Counseling

Kelley Drye regularly reviews and provides counseling on all aspects of business opportunity and income claims. This includes reviewing and evaluating business opportunity disclosures, corporate income and business opportunity claims, and distributor income and business opportunity claims. Kelley Drye attorneys work with clients' in-house attorneys and/or compliance personnel to develop appropriate strategies for risk mitigation in connection with distributor business opportunity and income claims.

## Government Investigations and Enforcement

Kelley Drye attorneys guide companies through the complex and daunting process of defending against regulatory investigations, enforcement actions and litigation brought by the FTC and state attorneys general for false or deceptive advertising and illegal sales or marketing practices, with the goal of achieving the best possible outcome for the client, whether that's closure of an inquiry, a favorable negotiated settlement or successful litigation of an enforcement action. Members of our team have a unique regulatory perspective developed from years of serving with the FTC's Bureau of Consumer Protection, including as bureau director, assistant director and attorney advisor, and strong relationships we've built working with attorneys at every level of the FTC and in the offices of

state attorneys general. We have an unparalleled record of success negotiating with state and federal regulators to close investigations amicably, including dozens of cases over the last decade in which we've convinced FTC staff not to recommend enforcement action to the Commission. We've used the same skills and similar relationships when working on numerous investigations by state attorneys general and negotiated assurances of voluntary compliance in both single- and multi-state matters.

## Consumer Class Action Defense of Unfair and Deceptive Trade Practice Allegations

We defend companies in state and federal consumer class actions and have particular expertise in actions alleging unfair or deceptive acts and practices or violations of state laws prohibiting pyramid schemes and endless chain schemes. Our trial 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.

## Dietary Supplements and Functional Foods

Kelley Drye provides strategic legal counsel to companies engaged in the development, launch and marketing of dietary supplement and functional food products, to help our clients to ensure that their products, labeling and marketing practices satisfy FDA, FTC, and related state law requirements. Our attorneys help clients develop dietary supplements and functional foods through the full product life cycle, navigating product safety obligations set forth under the Federal Food, Drug, and Cosmetic Act (FDCA) and laws prohibiting "unfair or deceptive acts or practices" under the FTC Act. We conduct reviews and provide counsel to ensure that supplement advertisements and marketing materials are truthful, not misleading and substantiated, and that companies have the competent and reliable scientific evidence required for health-related efficacy and safety claims.

## Cosmetics and Skincare Products

We counsel manufacturers and importers of cosmetics and other skincare products on premarket clearance requirements and help clients comply with federal and state product safety, consumer protection and import/export laws before products enter the marketplace, and ensures that product benefit claims are adequately substantiated by scientific research and other evidence. The team also coordinates with lawyers specializing in complementary areas of the firm's practice, including Advertising and Marketing Law, Product Liability, International Trade, Government Relations and Public Policy, Intellectual Property and White Collar Crime and Investigations.

## New Media Marketing

We advise on multimedia marketing and advertising initiatives that require compliance with the TCPA, the CAN-SPAM Act and state anti-spam laws. We counsel clients on effective strategies to navigate the evolving state and federal legal framework, self-regulatory guidelines and platform policies to take advantage of new media platforms, technologies and techniques to reach and expand their markets. We work with clients on virtually every dimension of new media marketing—blogs, endorsements and viral marketing; sponsored and native advertising; social media advertising and consumer-generated content, contests and promotions; platform terms of service and use, and numerous other legal issues associated with developing media channels.

## Advertising Transactions

Our team has extensive experience in helping clients to draft and negotiate the agreements that underlie these campaigns. Whether you need an agreement with your advertising agency, a celebrity endorser, a sports team, an app developer, or any other entity that is helping you to promote your brand, our team has the experience to help. Additionally, as advertising continues to embrace individual engagements and targeted online activations, our team seamlessly addresses the data-driven privacy and data security elements in these agreements.

## Consumer Privacy and Data Collection

We advise on the collection, use and protection of consumer data; develop and review privacy policies and practices; perform comprehensive compliance reviews of marketing and consumer-contact policies and practices, ranging from telemarketing compliance assessments, to privacy and data security-by-design gap analyses; and we help clients to identify and address potential “red flags” to mitigate their exposure of becoming a future regulatory or litigation target.

### Related Services

Dietary Supplements and Functional Foods  
Fashion and Retail  
Consumer Class Action Defense  
Litigation  
Trademark and Copyright Litigation  
Advertising and Marketing  
Consumer Product Safety Regulation  
Privacy and Information Security

### Contacts

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