

ABA SECTION OF ANTITRUST LAW

MEMORANDUM

**TO:** Roxann E. Henry

**FROM:** Consumer Protection Committee  
Trish Conners (Chair)  
Svetlana Gans (Chair)  
Daniel S. Blynn (Vice Chair)  
Nancy Felsten (Vice Chair)  
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Kenzie Rakes (Young Lawyer Representative)

**DATE:** November     , 2015

**RE:** Consumer Protection Committee Long Range Plan

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**Introduction**

We expect the next three years to be a pivotal time in the development of consumer protection law as a recognized and defined discipline. As such, it is important that the Consumer Protection Committee’s Long Range Plan ensures that the Committee’s focus and its substantive content remain relevant, timely, and essential to both full-time and occasional consumer protection practitioners.

The plan that follows includes three principal sections: (1) *Defining the Committee’s Mission* which discusses the current perceived scope of the Committee’s focus and ways to define the Committee’s priorities based upon its core competencies and other strengths, (2) *Identifying the Key Challenges* facing the Committee, and (3) *Identifying Ways of Overcoming the Challenges* by aligning the Committee’s focus with its natural potential audience and gearing its substantive content and content delivery to the needs of that audience.

**A. Defining The Committee’s Mission**

The Leadership Portal Consumer Protection Committee page describes the mandate of the Committee as:

...the ABA's place to be for developments in the law of false advertising, deceptive marketing and unfair trade practices. Our focus: law enforcement, rulemaking, and business guidance by the FTC, DoJ, CFPB, other federal agencies, state attorneys general, divisions of the Advertising Self-Regulatory Council (NAD, ERSP, and CARU) and their international counterparts... We work closely with the ADL [Advertising Disputes & Litigation] and PRIS [Privacy and Information Security] committees. Through our publications, programs and communication, the Consumer Protection Committee is your best source for the rules of the road for advertisers and marketers.

Since its inception, the Committee has maintained this general focus by broadly touching on consumer protection issues through its programming (monthly teleconferences/webinars, the biennial Consumer Protection Conference, and its Spring Meeting panels); its publications (*What's In Store* newsletter, its Bi-Monthly CP/ADL Updates, the Consumer Protection Law Developments (CPLD), and the anticipated Advertising Claims Substantiation Handbook); and its advocacy (Comments on U.S. and ex-US proposed consumer protection-related rules, regulations, and legislation). In recent years, the Committee's focus has been sharpened somewhat further by the creation of two other consumer-protection oriented committees, ADL and PRIS, which took on specific areas previously identified as within the scope of the original Consumer Protection Committee.

We believe that it is now time to further define the scope of the Committee's core mission in order to take a more strategic and targeted approach to the Committee's activities and offerings and to grow its membership. Defining the Committee's scope starts first with identifying the Committee's core competencies and then focusing on ways to build upon those competencies to better define the Committee's substantive space. Once the scope of the Committee's substantive focus is identified, then that definition can be utilized to expand membership and develop relevant substantive content.

The Committee's core competencies lie in two primary areas, advertising and marketing practices, and touch as well on those two areas as they relate to privacy and data security, in conjunction with PRIS, and as they relate to private advertising litigation, in conjunction with ADL. Additionally, the Committee's presence within the Section of Antitrust Law allows members to build relationships with regulators at the FTC, CFPB, and internationally, as well as the BBB, NAD, and other organizations, to an extent not offered by other consumer protection-oriented associations. The ABA and the Section provide an established and unique platform for thought leadership, exposing members to the extensive substantive expertise of lawyers, economists, academics and others who are the best in their fields. The ABA and the Section also offer a significant, established and diverse market for publication.

## **B. Identifying the Key Challenges**

Just as it is important to first understand the Committee's core strengths in defining the long-term direction of the Committee, it is equally important to recognize and address the Committee's challenges going forward.

## 1. Small Bench

The Committee's membership growth remains robust with membership close to doubling since 2010:

2010: 250  
2012: 380  
2015: 459<sup>1</sup>

However, while consumer protection continues to develop as a recognized discipline in recent years, the number of private practitioners and government lawyers who count it as a large portion of their practice is smaller in relation to those who identify themselves as competition lawyers, but that number continues to grow. There are now a handful of law firms that claim consumer protection as a primary practice area and more and more lawyers are becoming full-time consumer protection practitioners. These firms and some of the full-time practitioners, to date, have been heavily involved in the three consumer-protection related committees and are largely responsible for what has been achieved thus far. However, diversity of perspectives has sometimes been an issue as a result. Now, there are more law firms and lawyers making consumer protection the primary focus of their practices, and many more are including consumer protection law as a large part of more diverse practices along with such practice areas as competition law, trademark and copyright law, and intellectual property law.

This trend is reflected in our membership data, which, to the extent the information was provided by our members, shows that 244 lawyers from approximately 155 law firms are currently Committee members. This represents 53% of the membership that provided employment information. 17%, or 79 of our members, described themselves as in-house counsel and 32 members were with state or federal agencies. Please note that 102 of our members provided no identifier, and we will be following up with them to get a better understanding of our membership demographics. However, even with this preliminary information, it is safe to conclude that while the relatively small number of firms and lawyers practicing in the area remains a challenge, the fact is that consumer protection is a recognized, growing practice area that presents an opportunity for growth for the Section and the Committee.

## 2. Name Recognition Difficulties

Housing the Consumer Protection Committee within the Section of Antitrust Law makes sense since a good portion of consumer protection law is derived from government enforcement relating to advertising, marketing, and privacy, all within the enforcement realm of the Federal Trade Commission and the state attorneys

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<sup>1</sup> The Committee's membership roster lists 507 members, but latest data suggests the actual number of members is 459.

general, the same agencies responsible, along with the DOJ, for antitrust enforcement. The Section long has engaged with the FTC and the state attorneys general's NAAG Multistate Antitrust Task Force so it has made sense for the Section to build upon those relationships and expand into the consumer protection enforcement area. While the Antitrust Task Force does not typically engage in consumer protection enforcement itself, in many state attorneys' general offices, the attorneys responsible for antitrust enforcement are also charged with consumer protection enforcement, and/or are often housed in tandem with the antitrust enforcers within their agency. The Section has also successfully added international antitrust practitioners and more private plaintiff attorneys to its numbers in recent years and is seeking to do the same in the consumer protection area.

However, while consumer protection and antitrust may seem a natural fit, the name of the Section refers only to antitrust and suggests a lack of commitment to the consumer protection side of the Section. Even with the recently added tag line under the Section's name, "*Promoting Competition/Protecting Consumers*", it is not immediately apparent that there is a consumer protection component to the Section and, as a result, consumer protection practitioners often conclude that joining the Section will bring little benefit to them. This perception appears to continue to be an impediment to the substantive and membership growth of the Committee.

### **3. Presence of Competing Organizations**

Although the Section and the Committee provide unique opportunities as defined by its core competencies, substantive expertise, and strong relationships with enforcers, the existence of other substantive consumer protection-organizations means that many consumer protection practitioners have looked elsewhere to substantively engage and network with fellow practitioners and counselors. In the privacy realm, for example, the International Association of Privacy Practitioners boasts a healthy membership. In the marketing and promotions area, the Brand Activation Association (BAA) - formerly the PMA - regularly sponsors well-attended, large networking and programming activities for consumer protection attorneys throughout the year. And, the ABA's own Section of Business Law is often the section of choice for practitioners before the Consumer Financial Protection Bureau and for CFPB attorneys. The presence of these well established competing organizations therefore presents a key challenge that must be overcome if the Section and the Committee are to successfully grow in the long term.

### **4. Content Development and Delivery**

As with every committee, creating and delivering relevant substantive content is a continuing challenge. In addition to regular monthly telephonic updates, our bi-monthly CP/ADL updates, and the "brownbag" programs the Committee sponsors every month on a variety of topics, the Committee has also for at least the past three years worked with ADL and PRIS to provide a full CP-oriented track to parallel the antitrust offerings at the Spring meeting often in conjunction with another Section

committee.<sup>2</sup> The consumer-protection oriented Spring Meeting programs were moderately or well attended, with attendance ranging from a low of 17 to a high of 210. Most of the programs had about 40 to 70 attendees. In addition, 184 and 181 individuals attended the 2013 and 2015 Consumer Protection Conferences, respectively, at George Washington University, both of which focused on privacy, marketing and advertising issues.

In contrast to our most recent Consumer Protection Conference, a review of the programming at our Spring Meeting over the past three years suggests a heavy focus on privacy and big data issues as well as enforcement and less of a focus on marketing and advertising. The recent Consumer Protection Conference, on the other hand, dealt heavily with advertising and marketing issues but only marginally on enforcement and privacy.

To be more appropriately substantive in our content and ensure completeness in our offerings going forward, we believe the Committee's content development should be focused on its defined core competencies and then geared toward the audience identified as being most connected to those competencies. Accordingly, the challenge is to determine what substantive issues we expect to see in advertising, marketing and privacy in the next 3 to 5 years and design our substantive content development around those issues. Also key to the Committee's success is how the content will be delivered. A recent survey conducted by the Committee indicated that many responders found the Committee's monthly updates/webinars, bi-monthly CP/ADL updates, and *What's In Store* newsletter helpful, but few used Consumer Protection Law Updates as a go-to resource. Additionally, while we have partnered with a plethora of our sister committees, including ADL, PRIS, International, Joint Conduct, Unilateral Conduct, Media & Technology, Trial Practice, State Enforcement, Corporate Counseling, Compliance & Ethics, Federal Civil Enforcement, and Agriculture & Food, there is always room to expand our partnerships both within and outside of the Section. The challenge for the long-term is where to focus content development substantively and how to best deliver it.

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<sup>2</sup> In 2013, the Consumer Protection Committee sponsored or co-sponsored nine programs: CP Fundamentals, Claims Substantiation, Lessons Learned from Enforcement Actions, Privacy Compliance, Lanham Act issues, Privacy in the Cloud, Seals of Approval, International Advertising Rules, and the Impact of International Privacy on Discovery. In 2014, the Consumer Protection Committee sponsored or co-sponsored: CP Fundamentals; Self-Regulation, the ADR and Litigation; Privacy in the era of the Internet of Things; Third-Party Conduct Liability; False Advertising in the Mock TRO Hearing setting; CP Regulatory Roundup, Privacy in an Era of Big Data, and Class Actions over Regulated Labels. And, in 2015, there were ten CP-related programs: CP Fundamentals, the Rise of Professional Third-Party Consumer Advocacy, Self-Regulation, Data-Localization, FTC Data Security in a Mock Contempt Hearing setting, Competition Law Issues and Big Data, Disclosures in a Mobile and Online World, Consumer Protection Year in Review, Claims Substantiation, and False Advertising.

## C. Identifying Ways to Overcome the Challenges

### 1. Growing the Bench—Focusing on the Under-Represented

While we are growing, we must continue to work to widen the bench of existing members who actively participate in the Committee. It is important that we grow in a meaningful way that actively engages our current members and draws new members to actively participate in the Committee's work. Toward that end, we are working to understand more about the current demographics of our membership so that we can better understand the Committee's strengths and weaknesses. We are also doing outreach to our existing members to get them more involved in Committee projects, including seeking volunteers to assist with drafting more regular and robust updates regarding developments from the FTC, CFPB, and the state attorneys general, asking them to participate in a survey in conjunction with the Long Range Plan, seeking their editing assistance for the upcoming Advertising Claims Substantiation Handbook, and soliciting contributors to our newsletter, and more. We have also created several working groups, specifically focused on outreach, as discussed further below.

In addition to working to grow the number of active participants within the Section, we also believe that a more targeted approach to outreach focused on the under-represented, many of whom practice in the Committee's areas of core competency will expand our ranks more quickly and in a way that is more relevant to the narrowed scope of the Committee's efforts. Using our core strengths as a foundation, the Committee will regularly target its programming, publications and outreach to these groups. The logical primary demographic for membership development includes federal and state enforcers (including CFPB attorneys), private plaintiffs' counsel, in-house counsel and non-litigating consumer protection advisors/counselors, law schools (academics and students), and international practitioners/enforcers. The Committee's corresponding primary substantive focus for this demographic should then be on compliance and enforcement, policy, and advocacy, both in the U.S. and internationally. It will also be important to focus on attracting lawyers from outside of Washington, D.C. and New York as consumer protection issues are as local as they are national and since many consumer protection practitioners and enforcers are not confined to those geographic markets. And, any plan must also include academics and law students. The Committee proposes the following specific plan for growth with respect to each of these groups is as follows:

#### *a. Enforcers*

- **Including Enforcers in Committee Leadership:** The Section has already begun offering more leadership opportunities to federal and state enforcers. To begin with, for the first time the Committee is co-chaired by federal and state enforcers. Additionally, a state consumer protection enforcer was appointed as vice chair of the State Enforcement Committee.

- **Developing Enforcement-Related Content:** In the content realm, the Committee also has already enhanced its bi-weekly updates with contributions from federal and state enforcers to compile FTC, CFPB and state enforcement recent developments. The Committee is also re-vamping its *What's In Store* newsletter, ensuring regular columns from the perspective of the FTC and the state attorneys general and is working to add articles related to the CFPB and international enforcement. Over the next 3 to 5 years, the focus will be on developing significant, timely content related to federal, state, and international enforcement in the areas of marketing, advertising, and privacy. U.S. and international enforcers as well as those who practice before them will be invited to present programs and write for publications. Moreover, at least two programs (including an upcoming webinar focused on state enforcement and programs at the 2016 Spring Meeting) a year will be focused on state and federal consumer protection enforcement efforts.

**Expanding Outreach:** Regarding outreach, the Committee will coordinate with the FTC, CFPB, and National Association of Attorneys General (NAAG) to explain how Committee membership can enhance the careers of government lawyers and their relationships with the private bar. In particular, we will be conducting targeted outreach at the senior levels of the FTC and CFPB, including inviting them to attend and make remarks at our periodic networking receptions. Similarly, at the state level, the Committee will continue its efforts to attract state enforcers from around the country by reaching out to them directly and through NAAG to promote the benefits of Section and Committee membership. In this vein, the Committee's last networking event focused on state enforcers will take place on November 3, 2015 in St. Louis, during the NAAG Consumer Protection Meeting. The Committee will be following up with attendees to encourage them to join the Section and the Committee. At least one other networking event for state and federal enforcers is being planned to coincide with the 2016 Spring Meeting. Finally, with respect to the particular challenge of cultivating CFPB attorneys who appear to believe membership in the Business Law Section is a better substitute for Antitrust Section membership, the Committee is exploring ways to broaden the Public Service Membership Program to include the CFPB, and brainstorming on other membership benefits that could be provided to CFPB attorneys via a Section Reserves Project.

*b. Private Plaintiffs' Counsel*

- **Including Private Plaintiffs' Counsel in Leadership:** The Committee currently has no private plaintiffs' counsel as part of its leadership. A recent

survey conducted by the Committee indicated an interest by some private plaintiffs' counsel in playing a more active role in leadership and in the Committee's activities. As with the addition of enforcers, including private plaintiffs' counsel in the Committee leadership will ensure better balance in the Committee offerings and potentially draw more members who are private plaintiffs' counsel.

- **Adding Regular Content Relevant to Private Plaintiff's Counsel:** The Committee is currently following up with several private plaintiffs' counsel who have expressed an interest in participating in Committee activities. It is hoped that these lawyers will contribute content to the Committee through participation in the monthly updates and submission of articles for *What's In Store* as well as other publications. In particular, developments in class actions and class action remedies in both the U.S. and outside of the U.S. require more regular attention from the plaintiffs' perspective, and plaintiffs' attorneys practicing in the field will be solicited to help provide that perspective.
- **Expanding Outreach:** The Committee is already reaching out to key plaintiffs' firms that practice in consumer protection and asking them to get more involved in the Committee's efforts, and will also be engaging these firms regarding ideas for outreach and networking events outside of the beltway and in conjunction with local bar associations and other relevant organizations. In addition to personal targeted outreach, we will work with the Section's Civil Redress Committee to develop additional outreach and content ideas.

*c. In-House Counsel/Outside Non-Litigating Legal Advisors/Counselors*

- **Including In-House Counsel/Advisors in Leadership:** Currently, two of the Committee's vice-chairs are in-house counsel, and their focus has been on ensuring that the content of the monthly updates include a healthy dose of information on recent developments in advertising, marketing and privacy issues relevant to in-house counsel.
- **Ensuring Regular Content Relevant to In-House Counsel and Non-Litigating Counselors/Advisors:** The Committee intends to continue its in-house working group coordination with the Advertising Disputes and Litigation (ADL) Committee. This collaboration has already born significant fruit with the publication in the summer of 2015 of "Self-Regulation of Advertising in the United States: An Assessment of the National Advertising

Division.”<sup>3</sup> Additionally, the three consumer protection-related committees (ADL, PRIS and CP) will continue to work to identify programming content and other initiatives of interest to in-house counsel and non-litigating counselors/advisers. In addition to ensuring that the monthly updates/webinars remain attractive to in-house counsel, the in-house vice chairs will seek out colleagues willing to contribute regularly to *What’s In Store* and any stand-alone publication ultimately developed by the Committee. Moreover, at least two programs a year (including the November, 2015 webinar and the 2016 Spring Meeting program) will be devoted entirely to presentations directed to in-house counsel and non-litigating counselors and advisers. Finally, we will explore ways to partner with and tap into the very large group of non-litigating consumer protection counselors and advisers who are active members of the BAA and who rely on that organization’s events and other offerings to stay current on consumer protection law and developments.

- **Expanding Outreach:** Consideration is currently being given to ways to effectively develop parallel networking events in conjunction with industry association meetings held around the country as well as in conjunction with ABA-related and Section-related events, BAA, and IAPP events. In particular, the Committee has empaneled an In-House Counsel working group to focus on program ideas and ways we can improve the member benefit for in-house counsel. This group plans to meet quarterly and is led by in-house counsel leaders of the Committee. One immediate project will be to brainstorm regarding ways our monthly CP Updates can be repackaged and shortened for in-house counsel, given their time constraints.

*d. Law Schools/Young Lawyers*

- **Including Law Professors and Young Lawyers in Leadership:** One way to significantly enhance our substantive presence is to include more academics in our ranks and eventually as part of our leadership. One vice-chair is currently developing an initiative geared to drawing academics into our ranks and, through them, cultivating law students by interesting them in consumer protection as a career choice.
- **Enhancing our Content with Contributions from Academics, Young Lawyers, and Law Students:** The Committee will work to invite

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<sup>3</sup> The product of a 59-member working group of ADL and CP Committee members that included both in-house and outside counsel, the Report discusses the state of advertising self-regulation in the United States and offers recommendations “intended to assist the National Advertising Division (“NAD”) in fulfilling its mission of promoting truthfulness and accuracy in advertising.” The NAD has indicated it will be accepting many of the recommendations. As a result, the Working Group is discussing continuing its collaboration to follow up on the Report, once the NAD implements the recommendations.

academics, young lawyers, and law students to contribute to its programming and publications on a regular basis. The Committee already works to encourage young lawyers and law students to submit articles and other material for its publications but will target its efforts more regularly, including through law professors. The Committee also is renewing its challenge to law firms to involve junior associates to present portions of the monthly updates and contribute to the drafting of articles and comments on regulatory proposals.

- **Expanding Outreach:** Our Young Lawyer Representative, along with other committee members, will explore additional ways to target law students and young lawyers through another Working Group the Committee has established: The Law School Outreach Working Group. This working group will: 1) focus on ways to expand the “Why Consumer Protection” seminar to law schools outside of Washington, DC; and 2) conduct targeted outreach to identify law professors and adjuncts for their scholarship and thought leadership in consumer protection by way of articles and program ideas. Finally, the Committee is also looking into the feasibility of conducting networking events in conjunction with meetings of the Young Lawyers Section of the ABA.

*e. International Practitioners*

- **Including International Practitioners in Leadership:** One way to grow membership in the international consumer protection space is to add an international practitioner to the Committee’s leadership and the Committee recommends that this be a new vice chair position given the possibility for significant growth in this area.
- **Enhancing our Content with Contributions from International Practitioners:** As occurred with the submission of comments to Columbia’s competition law in October, the Committee continues its informal collaboration with representatives from ADL and PRIS, working to identify issues in the international consumer protection space worthy of comments. The Committee is also endeavoring to keep its members apprised of the policies and actions taken by foreign consumer protection authorities and international consumer protection networks as well as efforts in inter-governmental cooperation. International consumer protection-related updates are included in our monthly update webinars, where possible as well as in the *What’s in Store* newsletters and bi-monthly CP-ADL updates. Finally, with respect to programming, the Committee is looking into the viability of sponsoring a CP-related program outside of the United States on topics relevant to international practitioners. With the global economy, marketers are expanding their international presence and the Committee will

continue to cultivate ideas in content development attractive to international practitioners.

- **Expanding Outreach:** The first two bullets above can only ensure success if our outreach to international practitioners is expanded. The recent solicitation of drafters for the Columbia competition law comments resulted in a number of ex-US firms volunteering to assist and revealed an untapped market for potential growth for the Committee. The Committee is currently following up with those firms to determine other ways they may wish to contribute to the Committee's content. We are also reviewing the Committee and Section membership rosters to develop a list of foreign practitioners who may wish to become more involved in the Committee. Finally, consideration is being given to the feasibility of the Committee sponsoring networking events outside of the U.S. to be held in conjunction with other ABA-related events. To facilitate our outreach, the Committee has created a third working group, the International Working Group, that will work in tandem with the Section's International Committee and International Task Force to identify: 1) opportunities for Section comments abroad; 2) international enforcers the Committee could highlight; 3) private practitioners in the consumer-protection area abroad the Committee could engage; and 4) international developments the Committee could include some of its many programs or publications.

## **2. Dealing with the Name Recognition Problem**

While we are aware that there has been a long-standing debate about whether to change the name of the Section to the "Section of Antitrust and Consumer Protection Law" or "Section of Competition and Consumer Protection Law," we firmly believe that the most important way to ensure continuing success in the growth and relevance of the Consumer Protection Committee and its two sister CP-related committees is to work to take ownership of the area by including "Consumer Protection" or some other relevant reference in the name of the Section. Doing so would make it clear to consumer protection practitioners that the Section leadership views the area as equal to antitrust law in importance. We recognize there has been and may continue to be pushback from other ABA Sections, but in the long term, we believe a name change will do much to solidify Consumer Protection as belonging within the Section of Antitrust Law. We, therefore, would ask the Section to re-consider its decision and modify the name to include "Consumer Protection".

Short of changing the name, the Committee will continue to work to place Consumer Protection in the same sphere as Antitrust within the Section by working to grow its substantive presence through sponsoring topical programming and establishing a stand-alone substantive on-line periodical. The Committee will also work to continue to ensure that Committee offers a significant parallel programming track at

the Spring Meeting, and, along those lines, the Committee is looking into the viability of sponsoring an annual Consumer Protection luncheon with a strong keynote speaker that would take place on the Thursday of the Spring Meeting.

### 3. Differentiating the Committee from the Competition

By focusing on the Committee's core competencies and other strengths and identifying those areas best left to other organizations, we believe that we can effectively distinguish ourselves from our competitors in time. For example, we will focus more on compliance and enforcement, consumer protection policy, and opportunities for advocacy. We will also update our programming and other content to ensure it has timely relevance to the audience we are cultivating. And, we will endeavor to make CPLD a go-to resource for practitioners and develop at least one other regular, stand-alone publication such as a periodical that reflects the uniqueness of the Committee's offerings.

### 4. Content Development and Delivery.

*a. Content Development.* Key to successful content development is identifying the major substantive issues in advertising, marketing, and privacy as it relates to those two areas likely to arise in the next 3 to 5 years. Some of these include:

- **More Consumer Protection Class Actions.** Consumer protection-related class actions are on the rise and are more frequently being filed by local and regional firms often using state law and filing in state court, presenting increasing challenges to the defense bar and their clients. While it is increasingly difficult to obtain class certification, this, to date, has not affected the frequency, volume, and variety of these filings.
- **More State Enforcement.** Because it is increasingly difficult to obtain class certification generally and the recent U.S. Supreme Court rulings in *Concepcion* and *Italian Colors* have made it clear that arbitration clauses in consumer retail contracts foreclose private mass lawsuits or class actions on behalf of consumer classes regarding alleged misrepresentations occurring during those transactions, it may be left to the State Attorneys General to use their *parens patriae* authority to pursue those cases. It remains to be seen if this will occur, but because state attorneys general are typically not subject to the Class Action Fairness Act under *Mississippi ex rel. Hood v AU Optronics Corp.* and because F.R.Civ. P. 23 and its state equivalents do not apply to *parens patriae* actions, the door may be open to increased state enforcement in this area.
- **The Growth of the Global Market and Divergence in U.S. and International Law in Advertising, Marketing, and Privacy.** As the global

nature of marketing and advertising grows so will the challenges to enforcement and compliance. Compliance across international jurisdictions with differing advertising and marketing regulations and laws and different requirements with respect to privacy and data protection will only make application of the law in and across those boundaries less consistent and compliance more difficult.

- **Advertising and the Internet.** The Internet will continue to be used to advertise and market products and services and as such advertising content will continue to be presented in novel ways using the Internet, as we are seeing already and will continue to see with mobile apps and in social media. Geolocation and other consumer tracking privacy concerns also will certainly remain a major concern. Regulators are sure to continue to make internet advertising a focal point of enforcement initiatives.
- **Advertising Claims Substantiation.** An ever-evolving consumer protection area, enhanced by the increasingly novel ways ad content is delivered to the consumer, is advertising claims substantiation. This will continue to be a major regulatory and enforcement issues for the foreseeable future.
- **Financial Services Marketing, Advertising and Privacy Issues.** The manner in which financial services are marketed and advertised and the privacy issues that arise as the result of data breaches involving sensitive financial information will remain an issue until technology develops sufficiently to ensure comprehensive internet security.
- **Other Evolving Policy and Law Issues.** Other areas that will continue to present issues for discussion are those that are currently evolving or fairly early in their development. For example, the FTC recently announced guidelines for green advertising and just last year brought its first actions under the Restore Online Shopper’s Confidence Act (ROSCA). In addition, both the FTC and CFPB “unfairness” authority is evolving and is a ripe area for coverage. The Committee will continue to track the policies of the FTC, CFPB, and international enforcement authorities as these policies, and the law generally, evolves in the area of advertising and marketing and will ensure that it is always timely included in its programming.

***b. Content Delivery.*** Our content development going forward will focus on these and other areas the Committee identifies as it more actively seeks the input and participation of a diverse array of practitioners both within and outside of the Committee, the Section and the ABA. What follows is an outline of the Committee’s plan reflecting how best to deliver that content in ways that will help cultivate the Committee’s role as an equal substantive partner to Antitrust

within the Section and keep the Committee and the resources it offers relevant for years to come.

- **Building Partnerships with other Section Committees and Organizations.** The Committee has had great success partnering with other committees within the Section in the past and will continue to work to do that more frequently so that the connection between consumer protection and the other committees, particularly the more antitrust-oriented ones, is seamless. The most logical substantive committees to begin or continue a partnership with (other than ADL and PRIS, with which we already regularly partner) include corporate counseling, economics, federal civil enforcement, state enforcement, and international, among others. And, as has been noted, the Committee is also working to better understand and differentiate itself from its substantive programming competition. As we do that, we will look for ways to partner with organizations such as IAPP, BAA, and the other consumer-protection related organizations.
- **Enhancing Programming Content Delivery Throughout the Year.** The Committee has already begun enhancing the way it delivers its programming. For example, in October we began delivering our popular monthly telephonic updates in a webinar format, which has been very well received. We also have already added regular bi-weekly updates from the FTC and state attorneys general and are working to add updates from the CFPB. These updates join the private litigation CP/ADL monthly updates being shepherded by Vice Chair Dan Blynn. Going forward, we are working to enhance our website within Section and ABA requirements and we are enhancing our *What's In Store* newsletter to include as many perspectives as possible, including those from the FTC, state attorneys general, the CFPB, in-house counsel, international practitioners, and plaintiffs' counsel.
- **Ensuring Continued Growth of Substantive Offerings at the Spring Meeting.** This August, we worked closely with PRIS and ADL to submit more than a full slate (16 proposals) for the Spring Meeting to better ensure that a strong and complete Consumer Protection track is offered parallel to the antitrust offerings at the meeting. It is paramount that a strong, full CP track be offered every year to attract those consumer protection practitioners who do not practice antitrust to the Section's premier annual networking/program event. We will therefore continue to make this a priority every year. We also are working on a proposal, as mentioned above, to hold a consumer-protection oriented luncheon on the Thursday of the Spring Meeting. The proposed luncheon would have a keynote speaker who is prominent in the consumer protection field or in an industry or area relevant to consumer protection. We hope that the inclusion of this luncheon at a future Spring Meeting will send a

strong message that the Section leadership views consumer protection as equal to antitrust.

- **Working to Make the Biennial Consumer Protection Conference a Go-To Event.** With the scope of the Committee’s mission and its potential audience more clearly defined, the Committee will be in a better position to identify the types of programming most relevant and timely for presentation at the biennial Consumer Protection Conference. We will therefore continue to work to learn more about our current membership and our potential audience and hone our programming for this event and the Spring Meeting (as well as the rest of our substantive programming) accordingly.
- **Establishing a Stand-Alone Substantive Periodical.** The Committee believes that one of the things that will truly identify it as a strong, substantive committee is a scholarly on-line periodical that focuses on timely, relevant, substantive consumer-protection related topics and issues reflective of the Committee’s core competencies. Early discussions are under way focusing on what such a periodical would look like, etc. If the concept, once developed and presented, is approved, the goal is to produce the first edition by January 2017.
- **Repackaging Content.** Finally, the Committee is exploring ways to repackage and repurpose its content, including the CPLD and Committee Programs, for various audiences, such as in-house counsel and international practitioners. We are brainstorming ways to deliver content more topically so it is easier to find. In addition, CPLD was recently considered as one of the first publications to be offered as an E-Book, and we look forward to working with our colleagues on the Content Delivery Task Force to further explore this opportunity. As other committees, our Committee is also exploring ways to deliver our content faster and more efficiently.

## **Conclusion**

This Long Range Plan began with the current description of the Committee’s mission as it is currently described on the Leadership Portal Consumer Protection Committee page. The Plan has attempted to take that description and focus it more specifically toward advertising and marketing enforcement and counseling and the privacy issues attendant thereto (both in the U.S. and globally). Getting to the place where the Committee is clearly identified for these things will take time, but, if this Plan is used as a starting point and continues to be honed as we learn more about our strengths and our weaknesses, where we stand in juxtaposition to our competitors and other organizations that occupy the consumer protection space, and what we need to do to take advantage of our strengths to differentiate ourselves from the others, then we will have built a strong foundation for Consumer Protection be a long-term, viable and vital part of this Section.