



presents

Inaugural Annual Privacy Law Summit

Session 1

CCPA Enforcement Actions to Date

MCLE: 1.0 Hours

Thursday, February 9, 2023

10:15 a.m. – 11:15 a.m.

Speakers:

Gabriella Khorasanee, Data Privacy Counsel, Sephora
Dominique Shelton Leipzig, Partner, Cybersecurity & Data Privacy, Mayer Brown
Alysa Z. Hutnik, Partner, Kelly Drye

Conference Reference Materials

Points of view or opinions expressed in these pages are those of the speaker(s) and/or author(s). They have not been adopted or endorsed by the California Lawyers Association and do not constitute the official position or policy of the California Lawyers Association. Nothing contained herein is intended to address any specific legal inquiry, nor is it a substitute for independent legal research to original sources or obtaining separate legal advice regarding specific legal situations.

© 2023 California Lawyers Association

All Rights Reserved

The California Lawyers Association is an approved State Bar of California MCLE provider.

PRIVACY
LAW

CALIFORNIA
LAWYERS
ASSOCIATION

CCPA Enforcement Actions to Date

Jeewon Kim Serrato – Partner, BakerHostetler
Gabriella Khorasane – Privacy Counsel, Sephora
Dominique Shelton Leipzig – Partner, Mayer Brown
Alysa Z. Hutnik – Partner, Kelley Drye

February 9, 2023

CA AG Privacy Enforcement Actions

Privacy Violations Enforcement Actions

- Largest fine - \$8.5 Million
- Longest assessment period - Security assessment every 2 years for 20 years

Breach-Related Enforcement Actions

- Largest fine - \$600 Million
- Longest assessment period – 10 years

CCPA Enforcement Priorities July 2021

27

OAG Case Examples

Related CCPA Rights

Know/Access	11
Deletion	11
Opt-Out	13
Non-Discrimination	7

Absent or Confusing Sale of Personal Information Disclosures

'Do Not Sell' Link Absent or Not Functional

No 'Notice at Collection'

Non-Compliant Service Provider Contracts

Inadequate Request Methods for Authorized Agents

No Notice of Financial Incentive

Non-Compliant Opt-Out Process

Non-Compliant Privacy Policy

Untimely Responses to CCPA Requests

Charging Fees for CCPA Requests

Lack of Toll-Free Number

Inadequate Request Methods

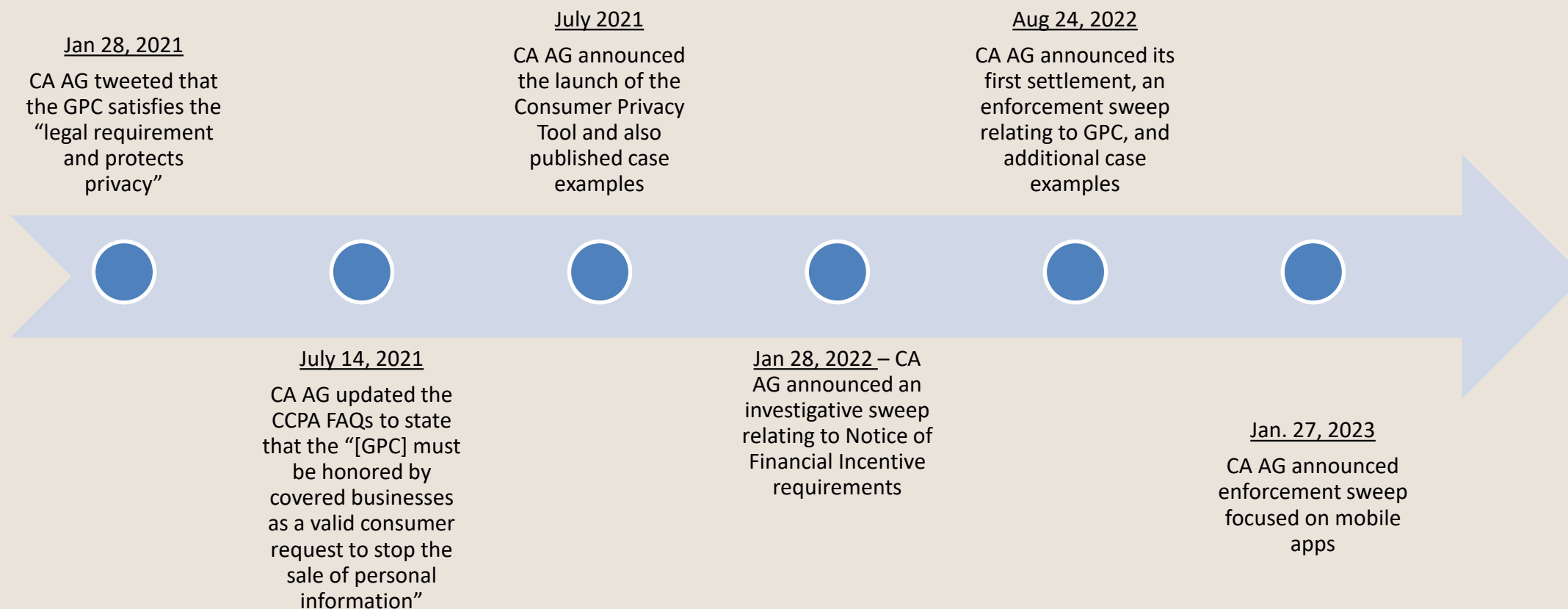
CCPA Enforcement Priorities August 2022

13

OAG
Examples



CCPA Enforcement Timeline



Do Not Sell

SALE USING ONLINE TRACKING TECHNOLOGY means SALE where the business discloses or makes available CONSUMERS' PERSONAL INFORMATION to third parties through the use of online tracking technologies such as pixels, web beacons, software developer kits, third party libraries, and cookies, in exchange for monetary or other valuable consideration, including, but not limited to: (1) personal information or other information such as analytics; or (2) free or discounted services.

→ AdTech tools like cookies, pixels, and analytics as sale under the CCPA

Global Privacy Control (GPC)

Businesses must recognize the GPC signal as one of the two methods through which a consumer is able to opt-out of the sale of personal information under the CCPA.

→ Businesses should understand underlying limitations of the GPC, including the challenges associated with consumers using multiple browsers or devices.

Service Provider Contract Requirements

- ✓ Businesses should assess whether service provider contracts meet the requirements in the CCPA
- ✓ Businesses should also conduct due diligence of its service providers and contactors to ensure that they are not using the personal information in violation of the CCPA (e.g., audit or test the service provider's or contractor's systems)

CPRA and the California Privacy Protection Agency

- A GPC signal should be responded to as an opt-out request
- Businesses can use “Your Privacy Choices” instead of “Do Not Sell or Share My Personal Information”
- Employee and B2B Data
- No more 30-day right to cure
- New regulations:
 - Cybersecurity Audits
 - Risk Assessments
 - Automated Decisionmaking





Key Takeaways



Dominique Shelton Leipzig

Partner

dsheltonleipzig@mayerbrown.com

Los Angeles

T +1 213 229 5152

Dominique Shelton Leipzig is a partner in Mayer Brown's Los Angeles office and a member of the Cybersecurity & Data Privacy practice. She serves as the lead for Global Data Innovation as well as Ad Tech Privacy & Data Management. She is one of the country's top privacy and data lawyers and her considerable experience helps clients navigate the evolving legal compliance issues related to privacy and data security for their digital data initiatives.

With more than 30 years of experience, Dominique provides strategic privacy and cyber-preparedness compliance advice, and defends, counsels and represents companies on privacy, global data security compliance, data breaches and investigations. Her experience includes defending companies under investigation by the Federal Trade Commission, attorneys general offices and other regulatory and government authorities. She advises companies on best practices in privacy, cybersecurity, data, mobile, cloud storage, Ad Tech privacy, Internet of Things and other areas of regulatory compliance.

Dominique has deep experience advising publicly-traded and privately held companies in technology, healthcare, media, entertainment, e-commerce, financial services and other industries. She leads companies in legal assessments of data security, cyber preparedness and compliance with such regulations as the California Confidentiality of Medical Information Act (CMIA), HIPAA, the Video Privacy Protection Act (VPPA), the Children's Online Privacy Protection Act (COPPA), the California Consumer Privacy Act (CCPA), and the NIST Cybersecurity Framework. She frequently conducts trainings for senior leadership, corporate boards and audit committees regarding risk identification and mitigation in the areas of privacy and cyber. She has trained more than 18,000 professionals on the CCPA and the California Privacy Rights Act. She represented the California Chamber of Commerce in a six-week negotiation with Alastair Mactaggart, his lawyer James Harrison, his consultant former FTC Technologist Ashkan Soltani and Senator Hertzberg regarding the CCPA 2.0—many of the business-friendly terms were obtained through those negotiations.

Dominique is the co-founder and co-CEO of NxtWork, a non-profit dedicated to diversifying the C-suite and the boardroom. She was recently appointed to the Nasdaq Center for Board Excellence's Risk and Cybersecurity Insights Council and is a member of the International Association of Privacy Professionals (IAPP) board. Her landmark book on the CCPA recently published a new edition, and she pioneered the concept of data as a pre-tangible asset in what she calls "our post-data world."

Experience

US Privacy Counseling

Ad Tech Counseling

- Advising website and online services operators on privacy and data security issues relating to ad tech (including behavioral tracking, privacy disclosures for tracking and consent).
- Advising health tech companies on privacy and data security marketing initiatives relating to health data.
- Advising fintech companies on privacy and data security initiatives involving health tech.
- Assisting large retail chains on privacy and cybersecurity compliance in the areas of cloud, Big Data and mobile.

Board Reports and Privacy Assessments

- Preparing board reports for public organizations concerning legal compliance with privacy and cybersecurity best practices.*
- Conducted employee, HR and IT interviews as part of comprehensive legal assessments of adequacy of privacy and cybersecurity policies.

Health Tech

- Advised a major medical device company on mobile medical application, Big Data, compliance with HIPAA privacy and security rules, the California Confidentiality of Medical Information Act (CMIA), cloud storage and privacy notices, policies and other privacy disclosures for its website for patient social networking, and communication with health care advisers.*
- Advised a health tech company regarding its online portal for diagnosis of ADHD, concerning compliance with HIPAA and the CMIA, and preparing privacy policies and CMIA disclosures.*
- Assisted a medical billing company with compliance with an FTC enforcement order and creating an updated website privacy policy, terms of use and website disclosures.*
- Conducted privacy due diligence in connection with a Fortune 100 consulting company's acquisition of two medical billing companies.*

Global Privacy & Data Protection Compliance

- Leading EU General Data Protection Regulation (GDPR) and Asia-Pacific Economic Area data legal compliance project for global companies in the semiconductor, IT, media and retail industries.
- Lead a review of one of the largest online auction website's vendor agreements for GDPR compliance.
- Handling cybersecurity compliance strategy in the United States and EU for major media corporations.
- Led an EU, Asia and South America data privacy and security compliance project for a major Japanese gaming company.*
- Lead cross-border transfer legal compliance strategies and vendor management strategies for several major retail, consulting, communications, payments and fast food companies.

Data Breach Investigations

- Served as project lead for a breach investigation for a global retail brand.*
- Lead a forensic breach investigation for a financial institution.*

- Lead a breach investigation for a global e-commerce website.*
- Lead a forensic breach investigation for an online service for a health and wellness mobile app.*
- Lead a forensic breach investigation and consumer notification for a global media company.*
- Lead a forensic breach investigation for a national consumer product retailer.*

Cyber Preparedness Counseling

- Lead a comprehensive data security legal assessment.
- Lead a cybersecurity preparedness program for a financial institution and serving as outside counsel member of its Cybersecurity Incident Response Team.
- Lead a privacy and data security legal assessment compliant with the NIST Cybersecurity Framework.
- Lead a review of data security and IT policies for a cloud service provider for compliance with the NIST Cybersecurity Framework.
- Lead a privacy and data security legal assessment for a media company.

California Consumer Privacy Act (CCPA) - Regulatory Experience

- Led a team that drafted comments to the California Attorney General's Office in connection with its CCPA rulemaking process on behalf of the California Chamber of Commerce, which includes a number of retailers. See California Chamber of Commerce Comments to the California Attorney General's Office for CCPA Rulemaking (March 8, 2019), available at [CCPA Public Comments \(at CCPA00000067\)](#).
- Testified before the California Senate Judiciary Committee in a hearing titled "Informational Hearing on the State of Privacy: CCPA vs GDPR" (March 5, 2019). See March 5, 2019 - Senate Judiciary Committee: Informational Meeting on State if Privacy CCPA vs GDPR.
- Testified before the Senate. See April 9, 2019 - Senate Judiciary Committee Hearing re Bill to expand Private Right of Action Under the CCPA - creating greater class action exposure for companies (SB 561) testimony.

CCPA and GDPR Compliance Counseling

- Representing several business-to-consumer clients in CCPA compliance, including multiple national retailers, a social networking platform, a medical provider and a fintech money transfer app embedded in multiple major national bank mobile apps.
- Representing a global device manufacturer in CCPA compliance efforts. Advising one of the largest semiconductor companies in the United States in CCPA compliance, having first led the company's GDPR compliance in 2017-2018.
- Representing a global ad tech company in CCPA compliance.
- Representing a global smart television app developer in CCPA and GDPR compliance.
- Representing the largest domestic consortium for financial data in CCPA compliance, after completing a privacy and data security assessment in 2018.

- Representing one of the largest ad serving networks in CCPA compliance.

*Prior firm experience

Education

- Brown University, BA
- Georgetown University Law Center, JD

Attorney Admissions

- California
- US District Court for the Central District of California
- US Court of Appeals for the Ninth Circuit
- US District Court for the Northern District of California
- US Supreme Court

Activities

- The National Black Lawyers
- International Association of Privacy Professionals (IAPP), Board of Directors, 2020
- Certified US Information Privacy Professional (CIPP/US) through the International Association of Privacy Professionals (IAPP)
- Federal Bar Association of Los Angeles, Board of Directors
- Magistrate Judge Merit Selection Panel for the U.S. District Court for the Central District of California, 2011 – 2017
- Los Angeles County Bar Association, Entertainment & Intellectual Property Law Section (ELIPS), Chair, 2011 – 2012
- Ninth Circuit Judicial Conference, Lawyer Representative
- Women Lawyers Association of Los Angeles (WLALA), President, 2005 – 2006, Life Member
- National Bar Association (NBA), Life Member
- Black Women Lawyers Association of Los Angeles (BWL), Life Member
- Langston Bar Association, Life Member
- California Women Lawyers Association, Board Member, 2004 – 2006
- Big Brothers Big Sisters of Greater Los Angeles, Board Member, 2007 – 2010

- Center Dance Arts, Board of Directors, Member 2013 – present
- Museum of Contemporary Arts, Drawings Committee, 2008 – 2011

Perspectives

- "Pratt's Privacy & Cybersecurity Law Report," LexisNexis, January 2023
- "Data Privacy & Cybersecurity: Spotlight on the Board and C-Suite for Global Data Innovation," Mayer Brown Forum: A Law Firm Community, November 14, 2022
- "Resilience Requires a Modern Path to Board-Level Cyber, Privacy and Data Risk Governance," Nasdaq, October 13, 2022
- "President Biden Signs Executive Order on U.S. Intelligence Activities to Implement EU-U.S. Data Privacy Framework," Legal Update, October 10, 2022
- "US FTC Moves Forward on Privacy Rulemaking with Public Forum," Legal Update, September 13, 2022
- "CA Attorney General Says 'The Kid Gloves Are Coming Off'; Announces \$1.2M Settlement with Retail Co. for CCPA Sales Violation," Legal Update, September 02, 2022
- "US FTC Launches Rulemaking on Commercial Surveillance and Data Security Practices," Legal Update, August 12, 2022
- "Africa's Innovation – July Developments Signal Attention Must Be Paid to Data Privacy Developments in Africa," Legal Update, August 05, 2022
- "HIPAA Privacy Concerns Post-*Dobbs*," Legal Update, July 05, 2022
- "Data Privacy: A Business Imperative for Boards & Leaders That May Contribute to Market Recovery," NASDAQ, June 29, 2022
- "How attention to data privacy will stabilize our financial markets," World Economic Forum, May 25, 2022
- "US Senate Confirms 5th FTC Commissioner – Now What?," Legal Update, May 16, 2022
- "Connecticut Passes Comprehensive Privacy Law: Comparing to Other State Privacy Laws," Legal Update, May 11, 2022
- "Ninth Circuit Provides Guidance Regarding Online Contract Formation," Legal Update, April 15, 2022
- "CPRA Could Obstruct Existing Employment Rights," International Association of Privacy Advisors - The Privacy Advisor, September 28, 2021
- "Ambiguity in CPRA Imperils Content Intended for Underrepresented Communities," International Association of Privacy Professionals - Privacy Perspectives, February 17, 2021
- "Data Privacy & Cybersecurity: Spotlight on the board and C-Suite for Global Data Innovation," Mayer Brown Forum: A Law Firm Community, ,

Events

- Artificial Intelligence & Financial Services Symposium, October 27, 2022
- Data Privacy & Cybersecurity: Spotlight on the board and C-Suite for Global Data Innovation, October 25, 2022
- Cyber Perspectives: The CPRA Regulatory Environment, With Jennifer Barrera, President and CEO, CalChamber, October 12, 2022
- Cyber Spotlight: NYDFS Cybersecurity Regulation – What Do the Proposed Changes and Increasing Enforcement Mean for Covered Entities?, October 11, 2022
- New Law: Avoid Errors When Releasing Female Patient Records, Healthcare Training Leader, Summer 2022
- Utah Consumer Privacy Act: What You Need to Know, June 15, 2022
- Incident Response: Cryptocurrency, NFT, DeFi and other Digital Asset Trading Platforms , Incident Response Forum Masterclass 2022, April 21, 2022

News

- "How the California Privacy Rights Act reshapes U.S. privacy compliance in 2023," Digiday, December 19, 2022
- "Updated Draft of California Privacy Rules Eases Business Burdens," Bloomberg Law (subscription required), November 22, 2022
- "Dominique Shelton Leipzig named a "Woman Leader in Tech Law" by The Recorder," Firm News, November 10, 2022
- "Women Leaders in Tech Law Dominique Shelton Leipzig," Law.com, November 02, 2022
- "32 Mayer Brown lawyers recognized in Euromoney's 2022 "Women in Business Law Expert Guide", " Firm News, November 02, 2022
- "Nasdaq Uncovered: Dominique Shelton Leipzig," Nasdaq, October 31, 2022
- "Women To Watch," LA Weekly, October 11, 2022
- "The Chaos Of Privacy Compliance In The US," AdExchanger, September 27, 2022
- "Black Boardroom Power 2022: Momentum To Increase Black Directors Continues But Challenges To Significantly Boost Black Corporate Leadership Persists," Black Enterprise, September 26, 2022
- "California's New Online Child Protection Law Will Challenge Companies ," The Wall Street Journal, September 15, 2022
- "Profile Interview: Dominique Shelton Leipzig," Infosecurity Group, September 12, 2022
- "A 2022 privacy regulation primer with Mayer Brown's Dominique Shelton Leipzig ," Digiday, July 19, 2022
- "This NASDAQ adviser thinks markets are tumbling because of data privacy changes," Fast Company, June 30, 2022
- "RSAC 2022: How Organizations Can Work Together to Improve Cybersecurity," BizTech, June 13, 2022
- "#RSAC: The Growing Relevance and Challenges of Privacy," InfoSecurity Magazine, June 07, 2022

- "Connecticut's data privacy law mirrors its predecessors but ups the stakes ," GDR (subscription required), May 04, 2022
- "Mayer Brown partners Dominique Shelton Leipzig and David Simon named to *Cybersecurity Docket's* 2022 "Incident Response 40" ," Firm News, April 22, 2022
- "On the Move: People & Companies," Los Angeles Business Journal, April 11, 2022
- "Mayer Brown Welcomes Data Privacy Veteran to Lead Global Data Innovation Practice," Cybersecurity Law Report (subscription required), April 06, 2022
- "Cybersecurity expert joins Mayer Brown's data privacy practice in Los Angeles ," Daily Journal, April 05, 2022
- "Mayer Brown Lands Cybersecurity, Data Privacy Lawyer Leipzig," Bloomberg Law (subscription required), April 04, 2022
- "Renowned data privacy lawyer Dominique Shelton Leipzig joins Mayer Brown's growing Los Angeles office ," Firm News, April 04, 2022
- "Mayer Brown Grabs Prominent Perkins Coie Data Privacy Atty," Law360, April 04, 2022
- "Mayer Brown lands veteran privacy lawyer from Perkins Coie," Reuters, April 04, 2022
- "Eyeing Digital Transformation, Mayer Brown Lands Leading Data Privacy Partner From Perkins Coie," Law.com (subscription required), April 04, 2022
- "Privacy and cybersecurity lawyer Dominique Shelton Leipzig, who has advised Amazon.com, Microsoft and Meta Platforms, is joining Mayer Brown as a partner in Los Angeles from Perkins Coie," The Daily Docket, April 04, 2022

Accolades

- Listed in *Chambers USA* for Privacy & Data Security, 2020 - 2022
- Listed in *Chambers Global* for Privacy & Data Security, 2021 - 2022
- Named one of the "Top 100 Women Lawyers in California" by the *Daily Journal*, 2021
- Named by *The Los Angeles Business Journal* as a "Women of Influence: Attorney," 2021
- Listed by *Los Angeles Magazine* as "Southern California Super Lawyers," 2012 - 2022
- Listed in the *Cybersecurity Docket* "Incident Response 30," 2019; and Listed in the *Cybersecurity Docket* "Incident Response 40" 2020 - 2022
- Listed by *The Best Lawyers in America* in Privacy and Data Security Law, 2016 - 2019
- Named a "Woman Leader in Tech Law," by *The Recorder*, 2014
- Named by *The Los Angeles Business Journal* as one of the Most Influential Lawyers: Digital Media and E-Commerce Law, 2014
- Named by *The Los Angeles Business Journal* as one of the Most Influential Lawyers: White Collar & Cyber Crimes Law, 2015

- Named “Intellectual Property Lawyer of the Year” by Century City Bar Association, 2012



ALYSA Z. HUTNIK

Partner

ahutnik@kelleydrye.com

Washington, DC
Tel: (202) 342-8603
Fax: (202) 342-8451

I REPRESENT LARGE AND SMALL TECHNOLOGY CLIENTS, HELPING THEM APPLY LEGAL OBLIGATIONS NIMBLY TO THEIR MARKETING AND DATA PRACTICES, AND DEFENDING THEM IN GOVERNMENT INVESTIGATIONS WITH MINDFULNESS ON EFFICIENCY AND RESULTS THAT SUPPORT INNOVATION.

ABOUT

Alysa Hutnik chairs the firm's Privacy and Information Security practice and delivers comprehensive expertise in all areas of privacy, data security and advertising law. Her experience ranges from strategic consumer protection oriented due diligence and compliance counseling to defending clients in FTC and state attorneys general investigations and competitor disputes. Much of Alysa's practice is focused in the digital and mobile space in particular, including cloud, mobile payment, calling/texting practices, AdTech and data-focused services.

Ranked as a leading practitioner in the Privacy & Data Security area by *Chambers USA*, *Chambers Global* and *Law360*, Alysa has received accolades for the dedicated and responsive service she provides to clients. The *US Legal 500* notes that Alysa provides "excellent, fast, efficient advice" regarding data privacy matters. In 2013, Alysa was one of just three attorneys under 40 practicing in the area of privacy and consumer protection law to be recognized as a "Rising Star" by *Law360*.

Highly responsive to her clients' needs, Alysa consistently delivers practical ideas and written deliverables in clear, effective language. An ardent team player and reliable solution-builder, Alysa is both a fierce advocate when needed, while consensus-driven when it benefits her client's position. Alysa's ability to prioritize, particularly when it comes to problem-solving, is grounded in listening to each client's needs, while safeguarding their position. Clients and colleagues alike appreciate Alysa's support in identifying and addressing "red flags" before serious problems can ensue.

Alysa is a frequent speaker at conferences around the country, as well as on national television news regarding legal privacy and technology-related developments.

Prior to joining the firm, Alysa was a federal clerk for the Honorable Joseph R. Goodwin, United States District Judge, Southern District of West Virginia.

PROFESSIONAL ACTIVITIES

Alysa is the current Finance Officer of the American Bar Association (ABA) Antitrust Section. She also has served as Consumer Protection Officer and on the Council of the ABA Antitrust Section, was the past chair of the Antitrust Section's Privacy and Information Security Committee, editor-in-chief of the Section's Data Security Handbook, and a co-chair of its 2011 Consumer Protection Conference.

EXPERIENCE

Providing practical legal advice on compliance with privacy, information security and marketing laws and best practices. This includes compliance with federal and state laws throughout the U.S. (including the California Consumer Privacy Act (CCPA)), as well as international laws such as the General Data Protection Regulation (GDPR). These efforts also include strategic advice applicable to the enterprise, and advertising and marketing practices; "privacy by design" efforts in developing software, apps and platforms; mobile payment compliance; and designing compliance programs to mitigate third-party liability exposure (whether from customers, affiliates, franchisees, independent dealers or service providers).

Performing TCPA and related consumer protection due diligence on calling and texting practices and technology solutions, as well as assisting clients in developing and enhancing telemarketing and non-telemarketing calling/texting compliance programs under the TCPA, TSR and state laws.

Assisting clients in proactive efforts designed to prevent data breaches, as well as crisis response and legal obligations upon discovering a potential data breach.

Assisting clients (particularly cloud-based platforms and solution providers) in developing efficient processes for managing and negotiating responses to third-party subpoenas that comply with applicable privacy and other laws, and are not unduly burdensome to the company.

Defending clients in privacy, data security, and advertising and marketing practice-focused investigations by the Federal Trade Commission (FTC) and state attorneys general.

Defending clients in advertising and marketing disputes with customers and competitors, including before the National Advertising Division and the National Advertising Review Board, and class action litigation (alleging false advertising and unfair and deceptive practice claims) in state and federal courts.

HONORS

Selected as one of *Washingtonian Magazine's* "Top Lawyers" in cybersecurity in 2017 and 2018.

Ranked nationally as a leading practitioner in the Privacy & Data Security area by *Chambers USA*, 2008-2022.

Ranked as a leading practitioner in the Privacy & Data Security area by *Chambers Global*, 2012-2022.

The Best Lawyers in America® (Woodward/White, Inc.), Advertising Law, 2020-2023.

Recommended in *US Legal 500* for her work in the Cyber Law – Data Protection and Privacy area, 2011-2022, Marketing and Advertising Litigation area, 2011-2014, 2020, and 2022 and Marketing and Advertising Law – Transactional and Regulatory, 2022.

Recognized as a leading attorney in the Consumer Law practice area by Washington D.C. *Super Lawyers*, 2020.

Named as a Rising Star by *Law360* in the area of Privacy and Consumer Protection Law, 2013.

MEMBERSHIPS

American Bar Association

International Association of Privacy Professionals (IAPP)

Professional Association for Customer Engagement (PACE)

EDUCATION

University of Maryland School of Law, J.D., 2001, Order of the Coif, Maryland University Law Review, executive editor
Haverford College, B.A., 1998

BAR ADMISSIONS

District of Columbia, 2002
Maryland, 2001

COURTS

U.S. Court of Appeals—First, Fourth and Ninth Circuits