

August 29, 2016

Michael J. Bresnick

T 202.344.4583
mjbresnick@Venable.com

VIA ELECTRONIC MAIL

Janet Ammerman
Federal Trade Commission
Bureau of Consumer Protection
Division of Marketing Practices
600 Pennsylvania Avenue, N.W.
CC-8528
Washington, D.C. 20580

Brad Winter
Federal Trade Commission
Bureau of Consumer Protection
Division of Enforcement
600 Pennsylvania Avenue, N.W.
CC-9528
Washington, D.C. 20530

Re: Response to Request for Application to Serve as Independent Compliance Auditor for Herbalife

Dear Ms. Ammerman and Mr. Winter:

On behalf of my team, I am pleased to express interest in becoming the Independent Compliance Auditor (“ICA”) for Herbalife International of America, Inc. (“Herbalife” or “the Company”) under the Stipulated Order for Permanent Injunction and Monetary Judgment (“the Order”), entered by the Honorable Beverly Reid O’Connell in the U.S. District Court for the Central District of California on July 25, 2016, to resolve a complaint brought by the Federal Trade Commission (“FTC”).

The FTC’s complaint, and the Court’s findings and Order, reveal the challenges the Company faces in reforming its policies and practices. At the same time, the Company’s swift resolution of the matter and its decision to work cooperatively with the FTC reveal the Company’s obvious commitment to reform. My team and I are uniquely qualified to audit the Company’s efforts to satisfy the requirements of the Order efficiently and effectively, and, in doing so, ensure its successful compliance.

Members of the team have been selected as the monitor of a large financial institution as required by a consent order with the FTC, retained by a multi-billion-dollar family office to provide an independent assessment of its trade surveillance systems and other trading activities

pursuant to a settlement with a federal regulator, and hired to support a court-appointed bankruptcy Examiner in the Caesars Entertainment Bankruptcy. We have led internal investigations of global companies, led the largest inter-agency federal and state task force ever designed to combat financial fraud, and monitored companies for compliance with settlements with a variety of government agencies. We also have extensive experience with multi-level marketing companies and business opportunities and conducting statistical and data analysis, and collectively possess decades of experience with appearing in federal court and preparing reports.

We are grateful to have the strong support of champions of consumer protection advocacy, senior public officials, and leaders within private industry, including (i) David Vladeck, Professor of Law, Georgetown University Law Center (former Director, Bureau of Consumer Protection, FTC), (ii) Illinois Attorney General Lisa Madigan, (iii) Tony West, Executive Vice President, General Counsel, and Corporate Secretary, PepsiCo, Inc. (former Associate Attorney General, U.S. Department of Justice), (iv) U.S. Representative Patrick L. Meehan, 7th District of Pennsylvania (former U.S. Attorney, Eastern District of Pennsylvania), (v) Channing D. Phillips, U.S. Attorney, District of the District of Columbia, (vi) Bob Zauzmer, Acting Pardon Attorney, U.S. Department of Justice, (vii) Ellen Doneski, Chief Advisor for Tax and Economic Policy for U.S. Senate Democratic Leader Harry Reid (former Staff Director, U.S. Senate Committee on Commerce, Science, and Transportation), (viii) Peirce Moser, Chief, Tax Crimes Unit, New York County District Attorney's Office, (ix) Richard J. Davis, court-appointed Bankruptcy Examiner for Caesars Entertainment, (x) Mona Thakkar, Assistant General Counsel, Volkswagen Group of America, Inc., (xi) Benjamin Saukas, Corporate Counsel, FTD Companies, Inc. (former Associate General Counsel, DirectBuy, Inc.), (xii) Michael W. Cordera, Assistant General Counsel, inventive Health, Inc, and (xiii) Richard W. Reinthaler, Partner, Winston & Strawn LLP.

In short, our team understands both the issues and challenges facing the Company and the most effective and least intrusive means of addressing them. We are committed to auditing the Company's ongoing efforts in a thorough and thoughtful manner and, ultimately, ensuring the Company attains full and sustainable compliance with the Order.

I. Background

On July 15, 2016, the FTC filed its complaint for permanent injunction and other equitable relief, alleging that the Company violated Section 5 of the FTC Act, 15 U.S.C. § 45, by: promoting participation in a multi-level marketing program with a compensation structure that can cause harm to participants, making false or misleading income representations, making unsubstantiated claims regarding the retail sales income earned by participants in the Company's program, and providing the means and instrumentalities to engage in deceptive acts and practices. The Company did not admit or deny these allegations, but agreed to the entry of an Order prohibiting certain business practices, misrepresentations, and material omissions, requiring various monitoring compliance, and payment of \$200 million in equitable relief. In addition, the Order requires the selection of an ICA, to be selected jointly by the FTC and the Company. The ICA is charged with reviewing, assessing, and evaluating the Company's compliance with the following requirements of the Order:

1. The Company is paying Multi-Level Compensation only in accordance with Subsection I.A., and subject to the limitations set forth in Subsections I.D., I.E., I.F., and I.H.;
2. The Company is differentiating between Preferred Customers and Business Opportunity Participants as required by Subsection I.B.;
3. The Company is collecting and maintaining retail sales information as required by Subsection I.C.;
4. The Company is taking all reasonable steps necessary to monitor and ensure that Profitable Retail Sales and Preferred Customer Purchases are genuine sales of Products, rather than an attempt to manipulate the program's compensation plan, as required by Subsection I.D.1.;
5. The Company is taking all reasonable steps to monitor and ensure that Profitable Retail Sales in fact occurred as reported in the information collected and maintained pursuant to Subsection I.D.2.;
6. The Company is complying with the requirements and limitations relating to claimed Profitable Retail Sales set forth in Subsection I.D.3.;
7. The Company is complying with the requirements and limitations relating to Rewardable Personal Consumption set forth in Subsection I.E.;
8. The Company is complying with the limitations on thresholds, targets, and requirements set forth in Subsection I.F.; and
9. The Company is complying with and enforcing the requirements and limitations on leased or purchased business locations set forth in Subsection I.I.

Order at § VI.B. Our team possesses the vision, the personnel, and the qualifications required to be an effective auditor.

II. Our Vision for the ICA

If we are selected, I will be the ICA, and will manage the team, coordinate each aspect of the team's work in combination with other team members, and bear ultimate responsibility for ensuring the Company's compliance with the Order.

Several core principles will inform our work. Based on our collective experience, we believe the team must:

- **Understand the limited nature of its role.** The ICA's sole purpose is to ensure the Company's compliance with the specified terms of the Order. The ICA has no other agenda and must not seek to effect change that the Order does not require. If the team were to exceed the scope of its duties, it would compromise its credibility, which is essential to its effectiveness. Similarly, the team must not usurp the role of the Company or otherwise substitute itself for the Company's management. Instead, its limitations are

in its title: Auditor. The ICA's role is not to act as a Receiver or otherwise run the company, but to ensure that the Company is doing what is necessary to implement the Order's requirements in an effective and sustainable manner by providing it with substantial assistance and oversight.

- **Be open and transparent.** We will, of course, provide regular reports (every 6 months for the first 3 years, pursuant to the § VI.I. of the Court's Order, and annually thereafter) to the Company and the FTC updating the parties on the status of the Company's compliance. In addition, we anticipate fostering an environment that allows for frequent and open communication with the Company and the FTC to ensure everyone is "on the same page" between formal reports. The Company should not be surprised by the presence of any findings or conclusions the ICA includes in a report: Any significant problems the ICA identifies would be communicated to the Company as soon as practicable. This open communication will foster greater trust in the ICA and set the Company up for success by allowing it to respond and explain to the ICA why any negative findings or conclusions are mistaken, or remediate any identified problems immediately.
- **Be cost-effective.** To be as cost-effective as possible, our team will use substantial resources from the Los Angeles office of Venable LLP, including legal personnel and support. This will reduce significantly the expenses associated with on-site visits required for meetings, interviews, document review, and data collection and analysis, as required. In addition, as you will see in our attached estimated budget, we are prepared to offer significant discounts from our standard billable rates.

By adhering to these principles, our team aims to work swiftly and collaboratively with the Company while using the Court's Order as its lodestar at all times.

III. Our Personnel

Our team of (i) former federal, state, and congressional prosecutors, civil enforcers, and investigators; (ii) monitors and assistants to monitors; (iii) accountants, a statistician, and forensic technology expert; and (iv) experts in regulatory compliance and multi-level marketing ("MLM") companies possess the experience and wisdom required to oversee and assist the Company in its efforts to succeed. The curriculum vitae or resume of each team member is included in **Appendix 1**.

A. Legal Team

Our lawyers – including (i) a former federal prosecutor and leader of a presidentially created, multi-agency Task Force, (ii) a former senior FTC official who led its Northeast Regional Office in New York City, (iii) a former senior advisor to Illinois Attorney General Lisa Madigan and U.S. Senator John D. Rockefeller (Ret.), the former Chairman of the U.S. Senate's Committee on Commerce, Science, and Transportation, and (iv) an attorney with extensive

experience with regulatory compliance and MLM companies who has spent the last decade in private practice helping companies comply with settlements, court-ordered consent decrees, and related auditing experience – possess unsurpassed experience and the qualifications necessary to audit the activities of the Company in this matter. We are:

Michael J. Bresnick, Chair of Financial Services Investigations and Enforcement Practice, Venable LLP. My experience in leading complex investigations, and in enforcing and protecting consumers' rights, is well established. First, as an Assistant U.S. Attorney in the Criminal Division of the Eastern District of Pennsylvania from 2003 to 2011, I led teams of attorneys and agents in some of the District's most complicated and high-profile matters, including public corruption, tax fraud, mortgage fraud, and healthcare fraud. In total, I led 16 federal criminal jury trials, presented arguments in federal district court on countless occasions, and appeared before the U.S. Court of Appeals for the Third Circuit through written submission or oral argument frequently. Later, I served as a supervisor in the Criminal Division's Fraud Section in Washington, D.C., where I oversaw a team of prosecutors investigating mortgage fraud and bank fraud, among other crimes.

I later was asked to serve as Executive Director of President Obama's Financial Fraud Enforcement Task Force at the U.S. Department of Justice, where I worked with the Attorney General and other senior leaders throughout federal and state government to address conduct that contributed to the Financial Crisis and impeded the nation's recovery. I led this Task Force from 2011 to 2013. During this time, among other things, I monitored the work of the many teams throughout DOJ investigating global financial institutions related to the packaging and sale of residential mortgage-backed securities, reporting directly to the Attorney General and Associate Attorney General.

Significantly, as Executive Director of the Task Force, I highlighted consumer protection as one of my priorities. For example, I created the Task Force's Consumer Protection Working Group, which brought together DOJ, FTC, CFPB, and numerous additional federal and state agencies to protect consumers through education, criminal prosecution, civil enforcement, and victim assistance. I also established guidance on a variety of matters government-wide, set priorities for the nation's prosecutors, civil attorneys, and regulatory agencies, and addressed the needs of the public by working closely with community organizations.

At Venable, I am Chair of the firm's Financial Services Investigations and Enforcement practice. In this capacity, I have represented global and regional banks, payment processors and other financial service providers, money transmitters, a national payments network, debt buyers, gaming companies, and prepaid card companies. I have led numerous internal investigations, conducted thorough compliance reviews, and defended corporate clients in investigations by a variety of federal and state agencies across a variety of industries.

Len Gordon, Partner, Venable LLP. Len is a partner in Venable's Advertising and Marketing group. An experienced litigation attorney, Len has more than 25 years of experience in government and private practice. Prior to joining Venable, he spent seven years at the Federal

Trade Commission, most recently as the Regional Director for the Northeast Regional Office in New York City, a position that he held for four years.

As Regional Director, Len ran the Northeast Regional Office and was directly involved in case selection, case management, and supervision of all attorneys, investigators, and support personnel. He served as the liaison to the FTC's Bureau of Competition and Bureau of Consumer Protection, and other law enforcement and community groups. While at the FTC Len directly investigated, litigated, and tried consumer protection cases for the agency, and supervised others in these activities. Len received the Award for Distinguished Service upon his departure from the FTC.

Since joining Venable, Len has represented companies and individuals in investigations and litigation with the FTC, state attorneys general, the U.S. Department of Justice, and the Consumer Financial Protection Bureau. He also regularly counsels clients on advertising and marketing compliance issues, using his experience at the FTC to help guide clients' business activity. In both government service and at Venable, Len has gained extensive experience regarding telemarketing, internet marketing, business opportunities, and for-profit education.

Ellen Berge, Partner, Venable LLP. Ellen focuses her practice on regulatory compliance matters, particularly consumer protection issues related to the advertising and marketing of goods and services through direct-to-consumer sales. Ellen routinely conducts end-to-end compliance assessments for companies on all aspects of the sales cycle, including lead generation, claims substantiation, enrollment and purchasing, fulfillment, payment processing, cancelations, refunds, and customer service.

Ellen assists companies in responding to investigative demands from the FTC, the Consumer Financial Protection Bureau, state attorneys general, and other federal and state consumer protection agencies. She has also negotiated settlement orders and consent decrees with these agencies, as well as settlements with private plaintiffs in class action lawsuits involving consumer protection issues.

As part of this work, Ellen advises clients on compliance with settlements, consent decrees, and court orders. She has worked with clients to revise and implement changes to marketing and sales practices to comply with injunctive provisions of orders, and drafted and prepared compliance reports required in these cases.

During her time at Venable, Ellen has worked on several matters involving MLM sales. She has advised both direct sellers of MLM opportunities and payment processors that provide transaction processing services for MLM companies. Her advice has covered commission structures and compensation plans, cost of entry, personal use sales, developing the "sales pitch" to prospective recruits, earnings claims, testimonials and endorsements, and other sales and marketing issues.

Erik Jones, Co-Chair of Congressional Investigations Practice, Venable LLP. Erik has substantial experience in consumer protection law in government and the private sector. He

has conducted and led multiple complex investigations, and has been responsible for drafting and negotiating significant consumer protection laws at both the state and federal levels.

From 2007 to 2013, Erik served as a lawyer to congressional committees in the United States House of Representatives and the United States Senate, first as Counsel to the House Committee on Oversight and Government Reform under Chairman Henry A. Waxman, and later as Chief Investigative Counsel to the Senate Committee on Commerce, Science, and Transportation under Chairman John D. Rockefeller IV. During his time in Congress, he led multiple hearings and investigations related to consumer protection issues. Notably, Erik led the Senate Commerce Committee's multi-year investigation into abusive billing practices on the Internet, and used the investigation's findings to draft the Restore Online Shoppers' Confidence Act (ROSCA). He also led a multi-year investigation into cramming, the practice of placing unauthorized third-party charges on telephone bills, as well as the first congressional inquiry into the practice of data brokers. While serving as Counsel to the House Oversight Committee, he led the investigation that uncovered high levels of formaldehyde in trailers that the Federal Emergency Management Agency supplied to victims of Hurricane Katrina.

From 2013 to 2015, Erik served as an Assistant Attorney General and Director of the Policy Bureau for the Office of Illinois Attorney General Lisa Madigan. In this position, he was responsible for developing and managing the office's agenda through investigations, legislation, and outreach initiatives. Among his responsibilities, Erik served as the Attorney General's lead advisor on data security, privacy, and other technology matters related to consumer protection. During his time with the office, Erik drafted and negotiated the first significant update to Illinois law on data security, led the Attorney General's inquiry into the collection of consumer medical information by websites and apps, led an investigation into employers' use of payroll cards, successfully drafted and negotiated a law to regulate payroll cards, and drafted and negotiated a consumer protection law aimed at patent trolls.

At Venable, he serves as Co-chair of the firm's Congressional Investigations practice, and works closely with the firm's State Attorneys General practice and Privacy and Data Security practice. He advises clients on compliance with state and federal consumer protection laws, and has defended multiple clients in investigations conducted by Congress and a variety of state and federal agencies.

B. Consulting Experts

I and my team will work closely with Alvarez & Marsal (A&M) professionals who bring deep expertise in advising and serving as independent fiduciaries and in providing investigation and litigation services, including accounting and statistical analyses of large amounts of data. They are:

Jonathan Vanderveen, Global Co-Head, A&M Disputes and Investigations.

Jonathan's practice centers on assisting clients dealing with regulatory issues, litigation matters, post-acquisition disputes, and internal investigations. Jonathan is a former auditor and partner in a Big Four accounting firm. He has worked in an array of industries consulting, investigating,

and presenting (including expert testimony) upon financial reporting misstatements, irregularities, and restatements.

In his fiduciary roles, Jonathan is currently retained by one of the world's largest financial institutions to provide an independent assessment of a data integrity program established and implemented pursuant to a settlement (and related Consent Judgement and Order) with the FTC. The assessment is to be performed biennially for a period of eight years. In a separate assignment, Jonathan is currently retained by a multi-billion-dollar family office to provide an independent assessment of its trade surveillance systems and certain other trading activities pursuant to a settlement with a federal regulator. A&M's work is being performed congruently with legal counsel who were retained to provide an independent assessment of a fund's compliance with federal securities laws. The assessment is to be performed biannually for a period of two years after the entry of the settlement.

Edward McDonough, Managing Director, A&M Disputes and Investigations.

Edward has been providing accounting, dispute and forensic analysis, bankruptcy litigation, and valuation services for 30 years. He has worked with clients across a variety of industries, including MLM, and has provided forensic accounting analysis in the investigation of various fraud schemes. He has testified on accounting and financial matters in numerous jurisdictions.

Edward also has assisted legal counsel in the analysis of audit practices and procedures related to the application of GAAP for a publicly traded company. He led several engagements, providing due diligence in conjunction with a national structured sales transaction for the Resolution Trust Corporation. He has served as a Chapter 7 and 11 Bankruptcy Trustee, Examiner, Receiver and Special Master in State Court, and served as the financial advisor to the Examiner in the Caesars Bankruptcy matter.

Benjamin Wilner, Managing Director, A&M Disputes and Investigations. Ben is a Ph.D. economist and statistician who regularly serves as a consultant and expert witness on damages, economic and statistical issues. In addition to advising corporations and governments on economic and statistical issues, Ben's disputes experience encompasses a broad range of single-plaintiff, class action, and criminal disputes and regulatory matters. He built statistical models for the Office of Mortgage Settlement Oversight & National Science Foundation to identify alleged fraud; was retained by several large financial institutions to build statistical monitoring models responding to CFPB, Federal Reserve, and state Insurance Department consent decrees; and received a special commendation from the Commissioner of U.S. Customs & Border Protection for building a statistical model to restructure a \$2.5 billion tariff.

Doug Anderson, Managing Director, A&M Disputes and Investigations. Doug co-leads the group's Forensic Technology practice. With more than 25 years of experience in leading and performing complex investigative and litigation consulting assignments, he has developed deep expertise in designing and applying technology-based solutions to resolve investigative and litigation-related challenges. Most recently, Doug was engaged by a major pharmaceutical manufacturer that had recently purchased substantial portions of another firm. In this role, he led a team of professionals charged with the identification, carve-out, and transfer of

electronic data and paper records obtained as a result of the acquisition. Doug designed and implemented a program to successfully accomplish the identification, validation, acquisition, review, management, and subsequent preservation and integration of approximately 16 million records obtained as a result of the purchase.

IV. Our Qualifications

Our team collectively has devoted decades to conducting complex corporate investigations, ensuring compliance with court-ordered settlements and consent decrees, and addressing the issues at the heart of the Court's Order.

Based on the sum of our experiences, we are eminently qualified to audit the Company's efforts to satisfy the requirements enumerated in the Order.

Qualification No. 1. *Monitoring, auditing, evaluating, or otherwise reviewing the performance of organizations, including experience in monitoring settlements, consent decrees, or court orders.*

Every member of our team has significant experience with monitoring, auditing, or otherwise reviewing the performance of organizations.

For example:

- As a federal prosecutor in Philadelphia, I frequently evaluated the performance of companies during investigations of high-profile matters, including a criminal investigation of a subsidiary of Johnson & Johnson for violations of the federal Food, Drug & Cosmetic Act, which resulted in a corporate guilty plea, a criminal fine and forfeiture, a related civil resolution, and implementation of a corporate integrity agreement.
- As Executive Director of President Obama's Financial Fraud Enforcement Task Force for nearly two years I directed and reviewed the activities and results of eight working groups and two committees. These groups were comprised of leaders from across federal and state governments and Native American Tribes. Such a diverse group had some overlapping goals, but there were also many independent initiatives driven by each particular agency's or department's mission. I was required to understand these issues and create a common vision for the working groups and committees. As the leader I worked with each of the various stakeholders to develop large-scale priorities, specific goals, and identifiable measurements against which we could define success. I led the development of a Strategic Scorecard, which I used as a management tool to assist in auditing the Task Force's work and measuring its success. This experience will help me to identify compliance issues and develop corrective measures to address weaknesses within existing operations.

- At Venable I have led multiple large-scale internal investigations of various companies, ranging in size from publicly traded global companies to smaller nonprofits, each of which required written and oral reports to Boards of Directors and various committees.
- Ellen Berge has assisted a direct-to-consumer seller of financial products and services with compliance reporting to the Federal Trade Commission resulting from a stipulated permanent injunction and monetary judgment; assisted a payment processor with compliance reporting to the Federal Trade Commission resulting from a stipulated injunction and final order against the defendant; assisted an e-commerce seller of dietary supplements in complying with injunctive provisions of a class action settlement and resulting court order requiring updates to the company's front-end advertising and marketing practices and back-end customer service practices; and assisted a major North American retailer of footwear in updating corporate marketing policies and procedures to comply with a settlement and court order relating to alleged violations of telephone consumer protection laws, including nationwide rollout and training at hundreds of retail locations across the U.S.
- With respect to MLM companies and business opportunities, Ellen has reviewed policies and procedures, distributor guidelines, and similar documents governing the terms and conditions applicable to consultant/distributor sales, benefits, requirements, training, ordering procedures, advertising, compensation, remedial actions, and other aspects; assisted in the development of consultant/distributor marketing policies and procedures; provided comprehensive advice and analysis for a private equity investor on the operations of a business opportunity targeted by the investor, including the legality of company and its operations; and developed a checklist for a payment processor to review the legality of multi-level marketing companies, with a particular focus on compensation structures and "downline" sales and marketing.
- At the FTC Len Gordon was directly involved in evaluating companies to determine whether their conduct warranted further investigation and whether an enforcement action was necessary, and negotiating the terms of consent decrees or court orders to remedy illegal conduct. Len supervised several compliance investigations at the FTC aimed at determining whether companies under FTC order were complying with their obligations under that order. At Venable, Len has negotiated numerous consent orders and regularly advises clients on how to comply with FTC orders.
- While working in Congress and the Illinois Attorney General's office, Erik Jones regularly conducted investigations to determine whether government agencies and companies were in compliance with state or federal law, and whether their conduct necessitated a change in state or federal law. These investigations required significant fact development to confirm the practices of the entities, and they often culminated in comprehensive reports that presented the findings of the investigations and legal conclusions. In his role, Erik supervised teams of lawyers who conducted document reviews, depositions, and witness interviews. The scope of the investigations ranged

from multi-week to multi-year engagements that included dozens of witness interviews and millions of pages of documents.

- A&M's Jonathan Vanderveen is currently retained by a global financial institution to provide an independent assessment of a data integrity program established and implemented pursuant to a settlement (and related Consent Judgement and Order – the "Order") with the FTC. The data integrity program pertains to mortgage servicing operations and addresses protections for consumers in Chapter 13 bankruptcy. The assessment is to be performed biennially for a period of eight years. Copies of his findings have been provided and/or made accessible for the FTC's review as mandated by the Order.
- Jonathan is also currently retained by a multi-billion-dollar family office to provide an independent assessment of its trade surveillance systems and certain other trading activities pursuant to a settlement with a federal regulator. His work is being performed congruently with legal counsel who was retained to provide an independent assessment of the fund's compliance with federal securities laws. The assessment is to be performed biannually for a period of two years after the entry of the settlement.
- A&M's Edward McDonough was appointed as the financial advisor to the Examiner in the Caesars Entertainment Bankruptcy. The investigation included an analysis of more than 15 disputed transactions, including several alleged fraudulent transfers with aggregate values in excess of \$3 billion, the LBO, payments to insiders and related parties, debt restructuring, and piercing the corporate veil. Specifically, he and his team at A&M performed a detailed solvency analysis of the Debtor at the time of the 2008 LBO and each year-end thereafter through 2014; valued the transferred assets to determine whether the Debtor had received reasonably equivalent value; analyzed debt exchanges to determine the use of funds, including payments to existing debtholders who were either insiders or related entities, intercompany transactions, and payments to related parties for alleged services; reviewed more than 8 million documents; and interviewed more than 70 individuals.

Qualification No. 2. *Statistical and data analysis*

Our team includes a Ph.D. economist and statistician, A&M's Dr. Benjamin Wilner, who built statistical models for the Office of Mortgage Settlement Oversight & National Science Foundation to identify alleged fraud; was retained by several large financial institutions to build statistical monitoring models responding to CFPB, Federal Reserve, and state Insurance Department consent decrees; and received a special commendation from the Commissioner of U.S. Customs & Border Protection for building a statistical model to restructure a \$2.5 billion tariff. Similarly, many other members of the team have experience in reviewing and analyzing large amounts of data during the course of their investigative and monitoring assignments.

Qualification No. 3. *Data management*

A&M's Doug Anderson, co-leader of the firm's Forensic Technology practice with more than 25 years of experience, will be a valued member of the team. Most recently, Doug was engaged by a major pharmaceutical manufacturer that had recently purchased substantial portions of another firm. In this role, he led a team of professionals charged with the identification, carve-out, and transfer of electronic data and paper records obtained as a result of the acquisition. Doug designed and implemented a program to successfully accomplish the identification, validation, acquisition, review, management, and subsequent preservation and integration of approximately 16 million records obtained as a result of the purchase.

Qualification No. 4. *Completing projects within anticipated deadlines and budget*

All members of the team frequently manage complex, long-term engagements for corporate and individual clients within anticipated budgets and deadlines.

Qualification No. 5. *Preparing for and participating in court proceedings*

I led 16 federal criminal trials while an Assistant U.S. Attorney in Philadelphia. In private practice I have represented individual and corporate clients in federal district court and state courts. Additionally, I have appeared and argued before the U.S. Court of Appeals for the Third and Seventh Circuits. All other members of the team similarly have extensive experience in preparing for and participating in court proceedings.

Qualification No. 6. *Report writing*

Every member of the team has extensive experience in preparing and presenting reports. For example, I and the other attorneys at Venable have prepared many interim and final reports while engaged in internal investigations. The consultants at A&M frequently write reports as a result of their appointment as monitor, or while assisting the monitor or bankruptcy examiner. In addition, an important part of my role as Executive Director of the Financial Fraud Enforcement Task Force also was to ensure the transparency and accountability of the work we were doing. To that end, I was responsible for reporting to the public, senior government officials, DOJ's Inspector General, and the Government Accountability Office the many plans, activities, and accomplishments of the Task Force, and to measure the success of each of the Task Force's many components. This experience and demonstrated leadership will allow me to review and assess with a fair but critical eye the effectiveness of the Company's operations and clearly communicate the results of our audit to Commission staff and the Company.

Erik Jones similarly has additional extensive experience in report writing from his time working in the U.S. Congress, where he supervised teams responsible for drafting committee reports that described, in detail, the findings of committee investigations, the legal conclusions from the investigations, and the investigation teams' recommendations for the committees. These reports would become part of a committee's official record, the *Congressional Record*, or part of the legislative history for any legislation that followed. Consequently, the reports had to

include well-documented findings of fact that accurately reflected the practices of the government agencies or companies under investigation. The reports also had to withstand scrutiny from members of the committee, the entities being investigated, and the press, as the reports were made available to the public as part of the committees' procedures. Erik has unique experience drafting high-profile reports on matters of national importance. During his time in Congress, he developed a reputation for writing reports that included a significant level of detail from extensive fact gathering, and a fair presentation of findings.

While leading the FTC's Northeast Regional Office, Len Gordon frequently prepared and submitted reports to the Director of the Bureau of Consumer Protection regarding the various investigations and cases within his office, synthesizing and analyzing the results, legal issues, and risks and defenses for each matter.

V. References for Team

As is evident below, our references in support of our application are unparalleled, and reveal the team's decades-long commitment to consumer protection and ensuring corporate compliance with court orders, settlements, and a variety of federal statutes and regulations.

References for Michael J. Bresnick:

1. Professor David Vladeck

(Former Director, Bureau of Consumer Protection, Federal Trade Commission)
Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, D.C. 20001
202.662.9540
vladeckd@law.georgetown.edu

2. Tony West

(Former Associate Attorney General, U.S. Department of Justice)
EVP Government Affairs, General Counsel & Corporate Secretary
PepsiCo, Inc.
700 Anderson Hill Road
Purchase, NY 10577
914.253.3030
tony.west@pepsico.com

3. Hon. Patrick L. Meehan, U.S. Representative, 7th District of Pennsylvania

(Former U.S. Attorney for the Eastern District of Pennsylvania)
434 Cannon HOB
Washington, D.C. 20515
202.225.2011

4. Hon. Channing D. Phillips

U.S. Attorney, District of the District of Columbia
Judiciary Center Building
555 Fourth Street, N.W.
Washington, D.C. 20530
202.252.7566
channing.phillips@usdoj.gov

5. Bob Zauzmer

Acting Pardon Attorney
(Former Chief of Appeals, U.S. Attorney's Office, Eastern District of Pennsylvania)
U.S. Department of Justice
145 N Street, N.E.
Washington, D.C. 20002
202.514.0315
bob.zauzmer@usdoj.gov

References for Erik Jones:

1. Illinois Attorney General Lisa Madigan

100 West Randolph Street
Chicago, IL 60601
(312) 814-3000

2. Ellen Doneski

(Former Staff Director [2009-2015], U.S. Senate Committee on Commerce, Science, and Transportation)
Chief Advisor for Tax and Economic Policy for U.S. Senate Democratic Leader Harry Reid
522 Hart Senate Office Building
Washington, D.C. 20510
202.779.3917
ellen_doneski@reid.senate.gov

3. Professor David Vladeck

(Former Director, Bureau of Consumer Protection, Federal Trade Commission)
Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, D.C. 20001
202.662.9540
vladeckd@law.georgetown.edu

Reference for Len Gordon:

- 1. Professor David Vladeck**
(Former Director, Bureau of Consumer Protection, Federal Trade Commission)
Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, D.C. 20001
202.662.9540
vladeckd@law.georgetown.edu

References for Ellen Traupman Berge:

- 1. Mona G. Thakkar**
Assistant General Counsel
Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Drive
Herndon, VA 20171
703.364-7534
mona.thakkar@vw.com
- 2. Benjamin Saukas**
(Former Associate General Counsel, DirectBuy, Inc.)
Corporate Counsel
FTD Companies, Inc.
3113 Woodcreek Dr.
Downers Grove, IL 60515
630.724.6085
bsaukas@ftdi.com

References for A&M Consultants:

- 1. Peirce Moser**
Assistant District Attorney – Chief of the Tax Crimes Unit
New York County District Attorney's Office
One Hogan Place
New York, NY 10013
212.335.8912
moserp@dany.nyc.gov

2. Richard J. Davis

Richard J. Davis Attorney at Law
Examiner in Caesars Bankruptcy
415 Madison Avenue, 11th Floor
New York, NY 10017
646.553.1365
richard.davis@rjdavislaw.com

3. Richard W. Reinthaler

Partner
Winston & Strawn LLP
200 Park Avenue
New York, NY 10166-4193
212.294.4631
rreinthaler@winston.com

4. Michael W. Cordera

Assistant General Counsel, Commercial
inVentiv Health, Inc.
500 Atrium Drive
Somerset, NJ 08873
732.584.5266
732.310.6391
michael.cordera@inventivhealth.com

VI. Methodology

The Initial Evaluation Period. The ICA, Commission staff, and Herbalife should engage in numerous discussions and meetings to determine the specific methodologies and procedures that will most effectively test the requirements in the Order, the specific data that will be used to substantiate any testing conclusions, and appropriate error rates. Instrumental to this process should be an onsite visit of approximately one week to Herbalife's headquarters, where the ICA and members of the team can receive a detailed briefing from Herbalife on the historical practices, procedures, and issues giving rise to the Order, observe the remedial operational practices implemented to date, discuss detailed procedures for testing, and review data from Herbalife's System of Record ("SOR") to understand the types of evidence that will be available to review during the testing. This Initial Evaluation Period should be completed within the first 90 days following the ICA's selection (i.e., approximately by the end of December 2016).

The Work Plan. The proposed Work Plan and budget, which must be submitted to the parties no later than 90 days prior to the Effective Date applicable to Section I of the Order (i.e., no later than February 25, 2017), will set forth the specific proposed testing standards, methodology, and procedures by which the ICA will test Herbalife's compliance, and the time periods for testing and reporting.

The Independent Review Group (the “IRG”). Herbalife will form an Independent Review Group (“IRG”) that is responsible for performing the initial test work necessary to assess Herbalife’s satisfaction of the requirements set forth in the Order (the “testable requirements”), which subsequently would be audited by the ICA. At all times, members of the IRG will remain independent from any areas of responsibility addressed in the order. The IRG will have the following responsibilities:

- The IRG will test and confirm through an independent review Herbalife’s compliance with the testable requirements (“Compliance Review”). The parties will agree in advance to the testing methodologies the IRG will use in order to assess the Company’s compliance.
- The IRG will report the results of its Compliance Review through a certification to the ICA. This certification will indicate that the IRG reviewed Herbalife’s claimed satisfaction with a particular requirement in the Order, and determined that it complied with the Order for each specific item. Upon completion of the IRG’s testing and submission of its Compliance Review to the ICA, the IRG also will provide the ICA with all documentation and other evidence that the IRG reviewed or considered during its test work (“Work Papers”). The IRG’s Work Papers will enable the ICA to verify independently the test results and Herbalife’s satisfaction of the testable requirements.
- The ICA will review the Compliance Review to determine whether the Company is in compliance with the Court’s Order. As part of its initial reviews for the first and second reports in Year 1, and longer if necessary to satisfy itself that the IRG is sufficiently independent and is performing the Compliance Reviews competently and completely, the ICA will test the entirety of the IRG’s Work Papers and conclusions rather than a representative sample, which may necessitate tracing transactions back to the original documents. After that time, the ICA anticipates examining a representative sample of IRG’s Work Papers and conclusions.
- If the ICA determines that the Company has complied with a particular requirement as outlined in the Work Plan, the ICA will indicate this result in his report. If the ICA determines that the Company has failed to comply, he will discuss this finding with the IRG immediately. If the IRG can satisfy the ICA’s concerns, the report will reflect this result. If, after consulting with the IRG, the ICA still concludes that the Company has failed to comply, the ICA will notify the Company and require the IRG to work with the ICA to create an agreed-upon Corrective Action Plan within 15 days.

Obtaining and Analyzing Information. The ICA will discuss with Herbalife and Commission staff the information that needs to be collected and analyzed in order to complete the scope of work. Additionally, the ICA will discuss the data identification, extraction, and preservation methodology used to ensure the integrity and reliability of the data extracted from the Company’s information systems. The IRG will collect and provide its Work Papers to the ICA for review. The ICA also may, as necessary, request additional information directly from the Company in order to ensure the independence of the IRG. If the IRG is unable to provide its Work Papers, or if the ICA needs to obtain additional information that the Company is unable to export at any point, the ICA has the ability to extract and analyze data from Herbalife’s SOR.

Testing Methodologies. The IRG, ICA, and Commission staff will work to establish agreed-upon testing methodologies that set forth the elements that Herbalife must establish in order to demonstrate compliance for each enumerated issue in the Order, and the types of evidence that will be required to establish each element. Each requirement in the Order will have its own unique testing elements, including a sampling approach and statistical parameters, allowable error rates, and a clear plan to confirm that Herbalife has satisfied the necessary conditions. These testing elements also will provide a procedure for the IRG to access and review the data systems needed to conduct its review of Herbalife's claimed compliance, and will be tailored to Herbalife's systems of record (SOR) and business practices.

Qualitative measurements. Certain requirements of the Order, such as reviewing the components and effectiveness of a particular training program (*see, e.g.*, §§ I.H., I.I.1.b.) and ensuring that the Company is adequately monitoring certain activities (*see, e.g.*, §§ 1.D.1; 1.D.2), are not amenable to review by Testing Definitions and statistical sampling. In these instances, the ICA will review the documentation related to these items, including agendas, outlines, scripts, PowerPoint presentations, and policies and procedures, among other things. The ICA also will attend and observe various training sessions and meet with members of the Company's monitoring team to review and assess their work product as required.

Participant Complaints. In addition to IRG testing, the ICA may want to access participant complaints received by Herbalife that are relevant to the issues in the Order. The ICA's review of participant complaints provides an additional method of ascertaining whether the changes to Herbalife's procedures have been effective, and an additional check on the IRG's testing.

Reporting Information. The ICA will provide an initial report six months after the Effective Date applicable to Section I of the Order (i.e., no later than November 25, 2017), and every six months for the first three years. The Initial Report will include and define the specific methodologies and procedures that will most effectively test the requirement in the order, as well as the specific methods of obtaining and analyzing the information required to perform the Scope of Work.

Coordination with Herbalife and Commission Staff. With the support of my administrative assistant, I will be the single point of contact to coordinate all communication with Herbalife and Commission staff, including meetings, emails, data collection, onsite-visits, and interviews. This will reduce complexity and unnecessary strain on the company and Commission staff. Of course, if it becomes more expedient to modify this at any point, we can adjust accordingly. For example, the parties may decide that it is simpler and more efficient to establish a communications system to facilitate the flow of information by connecting (i) members of the monitoring team to one another, (ii) members of the monitoring team, the Company, and the FTC to one another, and (iii) the monitoring team and Company participants. Also, we may establish a telephone hotline and dedicated email address for members of the public, including Company participants, to report activity to the ICA.

Personnel Activities. The Order sets forth nine different requirements that the ICA and team must "review, assess, and evaluate" for compliance. Each of these tasks will be assigned to one

or more supporting members of the team, who will have responsibility for reporting to the ICA. The ICA will oversee the activities of every team member. The tasks, and responsible personnel, are as follows:

1. The Company is paying Multi-Level Compensation only in accordance with Subsection I.A., and subject to the limitations set forth in Subsections I.D., I.E., I.F., and I.H. (Ellen Berge and Edward McDonough);
2. The Company is differentiating between Preferred Customers and Business Opportunity Participants as required by Subsection I.B. (Len Gordon and Edward McDonough);
3. The Company is collecting and maintaining retail sales information as required by Subsection I.C. (Len Gordon and Edward McDonough);
4. The Company is taking all reasonable steps necessary to monitor and ensure that Profitable Retail Sales and Preferred Customer Purchases are genuine sales of Products, rather than an attempt to manipulate the program's compensation plan, as required by Subsection I.D.1. (Erik Jones and Jonathan Vanderveen);
5. The Company is taking all reasonable steps to monitor and ensure that Profitable Retail Sales in fact occurred as reported in the information collected and maintained pursuant to Subsection I.D.2. (Erik Jones and Edward McDonough);
6. The Company is complying with the requirements and limitations relating to claimed Profitable Retail Sales set forth in Subsection I.D.3. (Erik Jones and Jonathan Vanderveen);
7. The Company is complying with the requirements and limitations relating to Rewardable Personal Consumption set forth in Subsection I.E. (Len Gordon and Jonathan Vanderveen);
8. The Company is complying with the limitations on thresholds, targets, and requirements set forth in Subsection I.F. (Ellen Berge and Jonathan Vanderveen); and
9. The Company is complying with and enforcing the requirements and limitations on leased or purchased business locations set forth in Subsection I.I. (Erik Jones and Jonathan Vanderveen).

Order at § VI.B.

Estimated Hours and Budget.



VII. Potential Conflicts of Interest or Bias

All but one member of the ICA team have never worked on any matters for Herbalife. One member, Ellen Berge, has not performed any work for Herbalife in the past two and a half years. She last worked one hour for Herbalife in January 2014 and, before that, just one and a half hours in January 2013, on a matter entirely unrelated to the Company’s multi-level marketing program and the issues addressed in the FTC’s complaint and the Court’s Order. Attorneys at Venable LLP, including Ellen, also have performed other work for Herbalife in the past – although no work has been performed by any member of the firm in the last year and a half, when approximately seven hours was billed in January and February 2015 – that similarly bears no relation to the current matter. If selected, pursuant to the Order, Venable LLP and A&M would agree not to be retained by the Company or the FTC for a period of two years following the engagement.

The following is a list of the unrelated matters in which Venable has represented Herbalife:

Matter	Open	Closed	Total Hours Billed	Team Member (Y/N)	Comments
Potential TCPA litigation	12/2014	2/2015	7.6	N	
Telemarketing Compliance	4/2013	7/2014	171.1	N	4.1 total hours billed in 2014; remainder billed in 2013
<i>The Tawnsaura Group LLC v. Herbalife International, Inc., et al.</i> , 12-CV-8982 (CDCA) (patent infringement)	4/2013	6/2013	48.1	N	
<i>Jennifer Nowicki Clark v. Herbalife International Inc., et al.</i> , 12-CV-8982 (CDCA) (TCPA class action)	10/2012	5/2014	1361.9	Y	Berge billed total of 10.5 hours; she last billed time (1 hour) in January 2014; before that, she last billed time (1.5 hours) in January 2013; remainder of time billed from Oct. to Dec. 2012;

					total Venable time billed in 2014 was 247.4 hours
<i>Mey v. Herbalife International, et al.</i> , 5:03-CV-00118-FPS (NDWV) (TCPA class action)	7/2003	2/2013	1,121.3	Y	Venable last billed only 1 hour in 2013, and 5 hours in 2012; Berge last billed 7 hours in 2011 and 1.5 hours in 2010; Venable was not lead counsel and was only involved in the settlement negotiations
TCPA and telemarketing advice	5/2003	6/2013	233.3	Y	Venable attorneys billed just 18 hours in 2013; Berge last billed time in 2004

These dated and entirely unrelated matters are not a bar to our application to serve as ICA for Herbalife. First, the work was performed almost entirely more than two years ago, with one negligible exception. Second, these matters related to class action litigation involving the TCPA, telemarketing, and patent infringement, none of which are related to the subject matters at issue in the recent FTC complaint and Court Order. Third, with the exception of Ellen Berge, who last performed an hour's worth of work for the Company more than two and a half years ago (in January 2014), and another hour and a half of work more than three and a half years ago (in January 2013), no one from the team worked on any of these matters.

District of Columbia Rule of Professional Conduct 1.9, titled "Conflict of Interest: Former Client," is most applicable to this issue. The Rule states that "[a] lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent." Even if it could be said that the ICA in this matter represents a new person whose interests are materially adverse to Herbalife's, the ICA's role in this matter is not "substantially related" to Venable's prior representation of the Company. According to the Commentary to the Rule, matters are "substantially related" if "they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent

matter.” Under this test, Venable’s prior work for Herbalife is not substantially related to this matter.

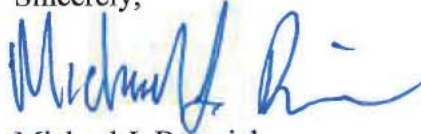
First, Venable’s prior work did not involve the same transactions or legal disputes as the current one. The issues are markedly different: multi-level marketing, compensation structure, retail sales, and related issues in this case, and TCPA class action litigation, telemarketing compliance, and patent infringement litigation in the prior work. Second, Venable did not obtain access to confidential information during the course of its prior unrelated representation that would aid or otherwise benefit the ICA in this matter. In any event, the Court’s Order here permits the ICA to have “full and complete access to all reasonably available information in the possession, custody, or control of [the Company] that is relevant to accomplishing the ICA’s duties and responsibilities” and not otherwise protected by a legally recognized privilege. Order at § VI.D. Consequently, even if Venable has access to confidential information during the course of its prior work that is remotely related to this matter—which it does not—that access would provide no benefit to the ICA at all, since the Court Order already permits the ICA to access all non-privileged information necessary to fulfill its duties.

VIII. Conclusion

Our team has the experience necessary to undertake such an important assignment.

Thank you for your attention to our response. If you have any questions, please feel free to contact me at (w) (202) 344-4583, (c) (917) 902-0536, or at mjbresnick@venable.com.

Sincerely,



Michael J. Bresnick

Appendix 1
Curricula Vitae



Michael J. Bresnick

Partner

Washington, DC Office

T 202.344.4583 F 202.344.8300

mjbresnick@Venable.com

AREAS OF PRACTICE

Commercial Litigation
Congressional Investigations
Investigations and White Collar
Defense
Regulatory
State Attorneys General

INDUSTRIES

Financial Services

GOVERNMENT EXPERIENCE

Assistant United States Attorney,
Criminal Division, United States
Attorney's Office, Eastern District
of Pennsylvania
Assistant Chief, Fraud Section,
Criminal Division, U.S. Department
of Justice
Executive Director, President
Obama's Financial Fraud
Enforcement Task Force, Office of
the U.S. Deputy Attorney General,
U.S. Department of Justice

BAR ADMISSIONS

District of Columbia
New York

Michael Bresnick, a partner in Venable's Washington, DC office, is Chair of the Financial Services Investigations and Enforcement Practice. Mr. Bresnick advises clients on a wide range of financial services, government enforcement actions, consumer protection, mortgage fraud, FIRREA, BSA/AML, securities matters, and congressional investigations. An accomplished trial and appellate attorney, Mr. Bresnick has led 16 federal trials and numerous cases in federal and state appellate courts.

As Executive Director of President Obama's Financial Fraud Enforcement Task Force from 2011-13, Mr. Bresnick served as a top advisor to the U.S. Attorney General and led the largest interagency coalition ever assembled to combat financial fraud. Mr. Bresnick worked with leaders across multiple agencies to rein in financial industry misconduct, establish guidance and priorities, and drive enforcement initiatives in significant securities fraud, fair lending, mortgage fraud, consumer fraud, and other matters. He regularly advised senior staff at the Justice Department, Treasury Department, Federal Bureau of Investigation, Securities and Exchange Commission, Commodity Futures Trading Commission, Federal Trade Commission, Federal Housing Finance Agency, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Reserve Board, Consumer Financial Protection Bureau, FinCEN, and Housing and Urban Development. He also worked regularly with a large cast of federal inspectors general, state attorneys general, state banking commissioners, U.S. Attorneys and international financial regulators.

Among highlights of his tenure, Mr. Bresnick launched the Task Force's Consumer Protection Working Group to combat consumer fraud on the federal, state and local levels through prosecution and education. He also launched the Residential Mortgage-Backed Securities Working Group, as instructed by the President in his 2011 State of the Union Address, and initiated innovative strategies to investigate fraud in the RMBS market through the use of FIRREA, working directly with the U.S. Attorney General and other senior Department of Justice ("DOJ") leaders.

Mr. Bresnick previously worked as an Assistant Chief in the Fraud Section of the U.S. Department of Justice's Criminal Division supervising a team of attorneys in the investigation and prosecution of financial crimes including mortgage fraud, bank fraud, investment fraud and grant and procurement fraud, among others. Prior to that, he served as an Assistant U.S. Attorney in the criminal division of the U.S. Attorney's Office for the Eastern District of Pennsylvania, one of the largest in the country. In this position, he gained significant experience investigating and prosecuting financial fraud, RICO crimes and healthcare fraud, including off-label marketing and cGMP violations.

In addition to his public service, Mr. Bresnick has significant experience in private practice. Most recently, he chaired the Financial Institutions Practice at a nationally recognized Washington, DC law firm. He began his career as a litigation associate focusing on white-collar criminal defense, including securities and corporate fraud, complex commercial litigation and bankruptcy litigation.

COURT ADMISSIONS

U.S. Supreme Court

U.S. Court of Appeals for the Seventh Circuit

U.S. District Court for the Southern District of New York

U.S. District Court for the Eastern District of New York

EDUCATION

J.D., *cum laude*, University of Maine School of Law, 1996

Editor-in-Chief, *Maine Law Review*

A.B., *cum laude*, Bowdoin College, 1992

JUDICIAL CLERKSHIPS

Honorable Conrad K. Cyr, U.S. Court of Appeals for the First Circuit

Honorable Morton A. Brody, U.S. District Court for the District of Maine

SIGNIFICANT MATTERS

- Senior executives and corporate clients in civil, criminal, and congressional investigations involving securities fraud, consumer fraud, FIRREA, BSA/AML, ethics and antitrust matters;
- High-level political target of criminal campaign finance investigation;
- National payments network in investigation by New York State Department of Financial Services;
- Global financial institutions for RMBS fraud, including JPMorgan Chase & Co. (DOJ's investigation of fraud in connection with sale of residential mortgage-backed securities, leading to \$13 billion settlement, the largest settlement ever paid by a single company to the government);
- Standard & Poor's Ratings Services (FIRREA complaint by DOJ alleging more than \$5 billion in loss caused by S&P's inflated ratings for certain structured debt securities);
- Global financial institution for fair lending fraud (DOJ investigation resulting in more than \$200 million settlement)
- Multinational healthcare company (criminal investigation of company's subsidiary for off-label marketing offenses, resulting in corporate guilty plea, a payment of \$400 million in criminal fine and forfeiture, and a total payment of more than \$2.2 billion to resolve all criminal and civil liability, one of the largest health care fraud settlements in U.S. history);
- Multiple financial institutions in DOJ FIRREA investigations for mass-marketing consumer fraud schemes, including fraudulent online payday lenders (as part of multi-agency enforcement initiative Mr. Bresnick created);
- Prominent multinational healthcare company for cGMP violations;
- Government officials and associates for public corruption and fraud.

HONORS

ATF Director's Award for Outstanding Service (2009)

U.S. Postal Inspector's Award (2008)

U.S. Department of Agriculture, Office of Inspector General, Award of Excellence (2008)

IRS Award for Outstanding Achievement (2008)

International Narcotics Enforcement Officers Association Special Award (2006)

Federal Law Enforcement Officers Association Award (2006)

PUBLICATIONS

- April 25, 2016, How Far Will RICO Probes of Online Lenders Go?, *American Banker*
- April 7, 2016, How Regulators Can Fight De-Risking, *American Banker*
- July 10, 2015, Enforcing BSA Rules by Roulette Imperils New Industries, *American Banker*
- May 7, 2015, Advertising Law News & Analysis - May 7, 2015, Advertising Alert
- May 5, 2015, Understanding Federal and State AG Financial Services Enforcement Trends
- March 2015, Operation Choke Point Update, Client Alerts

SPEAKING ENGAGEMENTS

- July 18, 2016, Banking Marijuana: A Primer for Banks, Financial Services Companies, and Cannabis Merchants
- June 9, 2016, "Preparing for Investigations & Enforcement" at Bloomberg BNA's Big Law Business Summit 2016
- June 2, 2016, "U.S. Department of Justice's Civil Enforcement Initiatives in the Wake of the Financial Crisis," at the New York City Bar Association's Banking Law

Committee Meeting

- January 8, 2016, "Program Developments in Banking Litigation and Enforcement" at the American Bar Association Business Law Section's 2016 Banking Law Committee Meeting
- November 18, 2015, "Banking, Finance & Investment in Gaming, Part II: The Latest in AML and Similar Financial Issues of Interest to Savvy Operators" at the Macao Gaming Show
- September 30, 2015, "Anti-Money Laundering Best Practices & Regulator Insights" at the 2015 Global Gaming Expo (G2E)
- June 4, 2015, "It Ain't Sexy...But It's Important: The Latest in AML" at the 2015 International Gaming Summit hosted by the International Association of Gaming Advisors
- May 5, 2015, Understanding Federal and State AG Financial Services Enforcement Trends
- April 29, 2015, An Advertising Law Symposium Hosted by Venable LLP
- March 31, 2015, "Engaged on All Sides: a 360-Degree View of Operation Choke Point" at ETA TRANSACT 15
- January 2015, "Changes and Trends in U.S. Law and Enforcement of Overseas Financial Institutions and Multi-National Companies" for Financial Services Industry Roundtable
- September 2014, "Operation Choke Point and the Dangers of Reputation Risk" for the American Banker Regulatory Symposium
- June 2014, "Financial Fraud and Crime," (a discussion of financial crimes affecting consumer credit) for the 16th AFSA State Government Affairs and Legal Issues Forum
- April 2014, "The New Face of Enforcement" at the Electronic Transactions Association's Transact14 Conference
- January 2014, "Financial Fraud Enforcement Task Force's Residential Mortgage-Backed Securities (RMBS) Working Group and Possible Future Developments" at the State Attorneys General Enforcement Network Webinar
- June 2013, "RMBS Fraud and the Department of Justice's FIRREA Investigation Against Standard & Poors" at FDIC's Financial Crimes Conference
- June 2013, "Evolution/Innovation in Fighting Fraud in Prepaid" at NBPCA's Power of Prepaid Conference
- March 2013, "The Role of Financial Institutions in Consumer Fraud Schemes" at the Exchequer Club of Washington, DC
- February 2013, "Mobile and e-Payments, Prepaid Cards, E-Wallets, Mobile Remote Deposit Capture, Emerging Payments Technologies" at FIBA AML Conference
- December 2012, "Third-Party Payment Processors and Anti-Money Laundering Risks" at Annual Symposium of Conference of State Bank Supervisors
- November 2012, "Regulatory Roundtable: Financial Regulators Talk About Their Current Enforcement Priorities" at Conference on Defending and Managing Global Financial Institutions Litigation
- October 2012, "Identifying and Protecting Against Investor Fraud" at Investor Fraud Law Enforcement Summit
- October 2012, "BSA/AML and Third-Party Payment Processors" with leading officials from FinCEN, OCC, FDIC, CFPB, FTC, and FBI
- September 2012, "The Department of Justice's Efforts To Combat Mortgage Abuses" for the White House Economic Competitiveness Forum on Housing
- August 2012, "Parallel Enforcement: Practical Implications of Increasing Coordination of Federal and State Efforts" for ABA's Annual National Conference
- April 2012, "Federal Law Enforcement of the Mortgage World" at MBA's National Fraud Issues Conference
- March 2012, "Procurement Fraud and Parallel Proceedings" at ABA Section of Public Contract Law, Procurement Fraud Committee



Leonard L. Gordon

Partner

New York, NY Office

T 212.370.6252 F 212.307.5598

lgordon@Venable.com

AREAS OF PRACTICE

Advertising and Marketing
 Advertising and Marketing
 Litigation
 Antitrust
 Antitrust Class Action Defense
 Litigation
 Privacy and Data Security
 Regulatory
 Antitrust Investigations
 Payment Processing and Merchant
 Services
 Antitrust Healthcare
 State Attorneys General

INDUSTRIES

Consumer Financial Protection
 Bureau Task Force
 Consumer Products and Services
 Drugs, Medical Devices and
 Biologics

GOVERNMENT EXPERIENCE

Senior Attorney, Federal Trade
 Commission
 Regional Director, Northeast
 Regional Office, Federal Trade
 Commission

Len Gordon is a partner in Venable's Antitrust and Advertising and Marketing groups. An experienced litigation attorney, Mr. Gordon has more than 20 years of experience in government and private practice.

Prior to joining Venable, Mr. Gordon spent seven years at the Federal Trade Commission, most recently as the Regional Director for the Northeast Regional Office in New York City. At the FTC, Mr. Gordon managed the Northeast Regional Office in matters including case selection; case management; and supervision of all attorneys, investigators and support personnel. He served as the liaison to the Bureau of Competition, Bureau of Consumer Protection, and other law enforcement and community groups.

Since joining Venable, Mr. Gordon has represented companies and individuals in investigations and litigation with the Federal Trade Commission, state Attorneys General, the Department of Justice, and the Consumer Financial Protection Bureau. He also regularly counsels clients on antitrust, advertising and marketing compliance issues using his experience at the FTC to help guide clients' business activity. Mr. Gordon also represents clients in business to business and class action litigation involving both consumer protection and antitrust issues.

SIGNIFICANT MATTERS

- Successfully represented several different manufacturers of dietary supplements in having FTC investigations into their advertising closed without agency action.
- Successfully represented several different payment processors in FTC investigations into whether the processors should be held liable for their roles in processing credit card payments for entities that were sued by the FTC. The investigations closed without agency action.
- Successfully represented several different entities in the coaching and mentoring industry in FTC investigations into their advertising and marketing. The investigations closed without agency action.
- On-going representation in numerous state Attorney General investigations involving advertising and negative option marketing.
- Multiple FTC investigations involving advertising and marketing issues in the dietary supplement industry.
- Successfully resolved FTC investigations involving "green claims."
- Multiple representations involving data security and privacy investigations.
- Advising numerous trade associations and standard setting organizations on antitrust and consumer protection issues.

Assistant Regional Director,
Northeast Regional Office, Federal
Trade Commission

BAR ADMISSIONS

District of Columbia

Maryland

New York

EDUCATION

J.D., with honors, George
Washington University Law
School, 1988

B.A., George Washington
University, 1985

SIGNIFICANT MATTERS WHILE AT THE FTC

Antitrust Matters

- **In Re Omnicare:** Managed challenge to \$760 million merger in institutional pharmacy business, which resulted in consent decree after litigation begun.
- **Hospital Mergers:** Directed the review and analysis of over a dozen hospital mergers.
- **In Re Dun & Bradstreet:** Managed and served as lead counsel in challenge to acquisition in the educational marketing data industry. Consent decree providing for divestitures obtained after several months of administrative litigation.
- **In Re Nufarm:** Managed challenge to acquisition in the herbicide industry that resulted in consent decree providing for divestitures. Worked with Canadian and UK competition authorities in obtaining relief.
- **In Re Cardinal Health:** Managed challenge to acquisition in radiopharmacy industry that resulted in consent decree providing for divestitures.
- **In Re Lubrizol:** Managed and led challenge to acquisition in the lubricants industry that resulted in consent decree providing for divestitures.
- **In Re Providence Health:** Managed investigation into hospital system's acquisition of the two leading cardiology practices in Spokane, Washington. Transaction ultimately abandoned after concerns expressed.
- **In Re Puerto Rico Association of Endodontists:** Served as lead attorney on investigation into price fixing and boycotting. The investigation led to the entry of a consent decree.
- **In Re Rite Aid:** Served as one of the key members of the team investigating the Rite Aid-Jean Coutu ("Eckerd") merger that resulted in a consent decree requiring the divestiture of stores.
- **In Re Colegio De Optemetras:** Served as one of the key members of the team that investigated the Colegio de Optemetras for price fixing. The investigation resulted in the entry of a consent decree.

Consumer Protection Matters

- **In Re Daniel Chapter One:** Managed, served as lead trial counsel and argued Commission appeal of case against seller of supplements that purported to treat and cure cancer. Obtained cease and desist order from ALJ, which was affirmed by the Commission and the D.C. Circuit.
- **Home Assure:** Managed case against mortgage foreclosure rescue company and its principals. Matter settled for \$2.3 million, representing full consumer redress.
- **Academy:** Managed case against debt collector. Matter settled for \$2.25 million judgment, which at the time was highest ever in a debt collection case.
- **Comcast:** Managed case against Comcast for Do Not Call violations relating to entity-specific violations. Matter settled for \$900,000 civil penalty.
- **Bronson Partners:** Managed case against sellers of weight loss products. Obtained summary judgment on liability and court entered \$1.94 million judgment after evidentiary hearing on monetary relief. Second Circuit affirmed.
- **Classic Closeouts:** Managed case against electronic merchant for unauthorized billing. Matter settled, and principal charged criminally based on our investigation.
- **Preferred Platinum Services Network:** Managed case against seller of work-at-home opportunities. Matter settled, and principal charged with and plead guilty to criminal charges based on our investigation.

HONORS

Recognized in the 2013 edition of *Legal 500*, Technology: Data Protection and Privacy

Recognized in the 2012 edition of *Legal 500*, Marketing and Advertising

PUBLICATIONS

- July 14, 2016, FTC finalizes "unnatural" orders, Olympic trademarks are not fair use, and more in this issue of Advertising Law News & Analysis
- June 17, 2016, FTC Continues To Attack 'Brain-Training' Claims, *Law360*
- June 16, 2016, Trademark and copyright guidance for publishers, FTC wins first jury verdict, and more in this edition of Advertising Law News & Analysis, Advertising Alert
- May 26, 2016, New FDA nutrition labels, avoiding dumb claims, and more in this issue of Advertising Law News & Analysis, Advertising Alert
- April 22, 2016, FTC keeps it real in "natural" claims, one step closer to federal civil trade protection, and more in this edition of Advertising Law News & Analysis, Advertising Alert
- April 7, 2016, Another cup of advertising insight, preventing company-ending campaign mistakes, and more in this issue of Advertising Law News & Analysis, Advertising Alert
- March 17, 2016, Lord & Taylor's native advertising troubles, an expensive reminder to review marketing practices, and more in this issue of Advertising Law News & Analysis, Advertising Alert
- March 10, 2016, Looping the Campbell-Ewald loophole, a peek at the FTC's Sentinel database, and more in this issue of Advertising Law News & Analysis, Advertising Alert
- March 3, 2016, Venable's precedent-setting viral video infringement case, ambiguity in federal microbead law, and more in this issue of Advertising Law News & Analysis
- February 11, 2016, Lifewatch battles the FTC's Consumer Sentinel database, state attorneys general urge Senate to HANGUP on robocalls, and more in this issue of Advertising Law News & Analysis, Advertising Alert
- February 4, 2016, Trademark use in big game advertising, FTC takes DeVry University to school, and more in this issue of Advertising Law News & Analysis, Advertising Alert
- January 12, 2016, Consumer Financial Protection Bureau 2016 Outlook
- November 16, 2015, FTC Consensus on Green Claims Seems to be Biodegrading, *Law360*
- January 1, 2015, Legal Review – FTC Dusts off ROSCA, Whacks a Few Marketers, *Response Magazine*
- Winter 2014, FTC Finds TRUSTe Didn't Verify, *Business Magazine*
- May 24, 2014, Navigating CFPB, FTC, and State Attorneys General Consumer Protection Investigations
- October 25, 2012, Ninth Circuit Disconnects Best Buy's "Dual Use" Robocall Argument
- August 9, 2012, FTC's Burden Of Proof Too Heavy For Piggybacking, *Law360*
- May 23, 2012, Class Action Complaint Alleging Invitation to Collude on Truck Rental Prices Upheld in First Circuit, Antitrust Alert
- May 9, 2012, ACOs, Clinical Integration and Managing Antitrust Risk, Antitrust Alert
- May 8, 2012, Endorsements From Regular People Are Powerful, but Mind the FTC's Guidelines, *DRMA Voice*
- April 27, 2012, FTC Approves LoopNet – CoStar Merger With Conditions, Antitrust Alert
- April 2012, FTC Continues Active Enforcement with Decision to Block Hospital Merger in Toledo, Ohio, Antitrust Alert

SPEAKING ENGAGEMENTS

- May 19, 2016, "Hot Topics in Food & Dietary Supplement Advertising" for Lawline
- April 12, 2016, "How to Answer When the FTC Comes Knocking" at the 3rd Annual Venable Advertising Law Symposium

- January 12, 2016, "Consumer Financial Protection Bureau 2016 Outlook," a Venable Webinar and CLE session
- November 10, 2015, "Defending against Actual /Potential FTC and Other Regulatory Investigations" at the BAA's 37th Marketing Law Conference-Walking the Line: Between Innovation and Regulation
- April 29, 2015, An Advertising Law Symposium Hosted by Venable LLP
- October 20, 2014, Bridging the Gaps: An Advertising Law Symposium Hosted by Venable LLP
- October 17, 2014, "Ethics for Advertising Lawyers" for the New York City Bar Association
- April 24, 2014, "Navigating CFPB, FTC, and State Attorneys General Consumer Protection Investigations" for LeadsCouncil
- April 10, 2014, "Understanding Operation Choke Point: The New Compliance Environment" at the ETA Transact 14 Conference
- March 11, 2014, Connecting the Dots: An Advertising Law Symposium Hosted by Venable LLP
- February 28, 2014, "Insurance Advertising Compliance: A Practical Guide to Ensuring Effective, Successful and Compliant Advertising" at ACI's 8th Annual Insurance Regulation Summit
- October 22, 2013, Practical and Legal Guidance for Social Media Engagement
- May 9, 2013, "An Apple a Day: What You Need to Know about Antitrust and Health Care" for NYSBA CLE
- November 12, 2012 - November 14, 2012, The 34th Annual PMA Promotion Marketing Law Conference
- October 17, 2012, "Hot Topics in Marketing and Advertising Law 2012" at the New York City Bar Center for CLE
- October 10, 2012, "Blogging Without Logging FTC Lawsuits," Benjamin N. Cardozo School of Law, Intellectual Property and Information Law Program
- May 18, 2012, A Day of Social Media: What Every In-House Lawyer Needs to Know About Social Media
- January 26, 2012, "Preliminary Injunction Standards for the FTC and the DOJ in Merger Cases" for the New York State Bar Association Antitrust Section Annual Meeting
- October 26, 2011, "You Better Disclose That: Ensuring that Your Company is Closely Adhering to the FTC's Endorsement and Testimonial Guidelines" at ACI's Conference on Social Media
- October 19, 2011, "FTC Developments" for New York City Bar Association's Hot Topics in Advertising Program
- September 26, 2011, "The Latest Regulatory & Enforcement Actions" at ACI's Cyber & Data Risk Insurance Conference
- September 15, 2011, Connecticut Privacy Forum
- June 14, 2011, "New Privacy Models" at the Internet Society INET Conference
- June 13, 2011, "Mobile Marketing Issues" at ABA's IP Section Marketing Law Roundtable
- May 25, 2011, "FTC Enforcement Priorities" for IQPC Financial Services Compliance Conference
- May 18, 2011, "FTC Privacy Priorities" at the New York City Bar Association's Consumer Affairs Committee Program
- March 16, 2011, "FTC Consumer Protection Priorities" for the Westchester & Fairfield County Chapter American Corporate Counsel Association
- March 1, 2011, "The FTC Privacy Report" at NY Intellectual Property Law Association's Privacy Program
- November 18, 2010, "Challenges to Consummated Mergers" at the ABA Antitrust Section Fall Forum
- October 5, 2010, "The Red Flags Rule" at the NJ Association of Women Business

Owners Annual Meeting

- September 24, 2010, "FTC Enforcement Activity" for the ACI Conference on Sweepstakes and Promotions Law
- July 26, 2010, "FTC Enforcement Activity Regarding Mortgage & Debt Relief Lead Generators" for LeadsCon
- May 26, 2010, "Government Enforcement Activity" at ACI's Conference on Financial Regulation
- May 18, 2010, "FTC Antitrust Priorities" for New Jersey Chapter American Corporate Counsel Association
- May 3, 2010, "FTC Privacy Enforcement and Initiatives" for the Boston Bar Association
- April 28, 2010, "FTC Privacy Enforcement and Initiatives" for the NY City Bar Association
- April 26, 2010, "FTC Enforcement" at PLI's HealthCare Law Developments Program
- April 15, 2010, "FTC Endorsement and Testimonial Guides" at ABA's IP Section Marketing Law Roundtable
- December 23, 2009, "FTC Endorsement and Testimonial Guides" for NY City Bar Association
- December 10, 2009, "The Red Flags Rule" for Boston Bar Association
- December 8, 2009, "Green Advertising" for Fairleigh Dickinson University Institute for Sustainable Enterprise
- November 17, 2009, "FTC Antitrust Enforcement" for the NY Chapter American Corporate Counsel Association
- November 5, 2009, "FTC Update" for the Connecticut Bar Association's Antitrust Section
- October 30, 2009, "FTC Enforcement Activity" for New York City Bar Association Hot Topics in Advertising
- August 11, 2009, "Hot Topics in Marketing and Enforcement" at Affiliate Summit
- June 23, 2009, "FTC Perspectives" for the PLI Institute on Data Security
- June 4, 2009, "Green Marketing" for ABA's IP Section Marketing Law Roundtable
- May 12, 2009, "Developments in Behavioral Advertising" at BBB Workshop on Developing Trust and Transparency
- April 12, 2009, "The Red Flags Rule and Identity Theft" for the American Corporate Counsel Association – Compliance Section
- February 27, 2009, "FTC Enforcement Activity" at ACI's Privacy & Data Security Program
- August 11, 2008, "Hot Topics in Affiliate Marketing" for Affiliate Summit
- June 18, 2008, "Last 12 Months of FTC Antitrust Enforcement" for the New York City Bar Association Antitrust Section
- May 22, 2008, "FTC Enforcement Activity" for the Interactive Advertising Bureau
- September 27, 2007, "FTC Enforcement Activity in Lead Generation" at the Online Marketing & Media Association Conference
- June 15, 2007, "Data Security Developments" at BBB Green Light & Red Flags Program for Advertisers
- January 21, 2007, "Protecting Privacy and Security: Keeping Pace With Rising Requirements To Protect Data" at the 3rd Annual Legal & Compliance Executives Forum on Insurance Regulation
- September 28, 2006, "Meeting Regulatory Standards for Privacy and Data Security" for the American Conference Institute, 3rd National Legal and Operational Forum on Preventing and Responding to Security Breaches
- June 26, 2006, "Antitrust Issues in Real Estate" for MLS Property Information Network, Inc., Wakefield and Westborough
- June 9, 2006, "Privacy Panel Discussion: Where Are the Limits Today: Practical Considerations for Your Client and Your Company" at University of Dayton School of Law Significant Developments in Computer and Cyberspace Law



Ellen Traupman Berge

Partner

Washington, DC Office

T 202.344.4704 F 202.344.8300

etberge@Venable.com

AREAS OF PRACTICE

Advertising and Marketing
 Advertising and Marketing
 Litigation
 Privacy and Data Security
 Consumer Finance
 Regulatory
 Payment Processing and Merchant
 Services
 Communications

INDUSTRIES

Financial Services
 Consumer Financial Protection
 Bureau Task Force

BAR ADMISSIONS

District of Columbia
 Maryland

EDUCATION

J.D., *magna cum laude*, Catholic
 University of America, Columbus
 School of Law, 2002

Certificate, Institute of
 Communications Law Studies,
 Catholic University of America,
 Columbus School of Law, 2002

Ellen Berge is a partner in the Washington, DC office of Venable LLP. She counsels businesses on legal matters related to the advertising, marketing, and transaction processing of products and services sold through retail and direct-to-consumer marketing channels, including radio, television, direct mail, telemarketing, Internet, affiliate marketing, social media, and mobile devices.

Advertising, Marketing, and Lead Generation

Ms. Berge routinely conducts end-to-end compliance assessments for companies, providing detailed reviews and recommendations relating to a company's affiliate marketing and lead generation activities through sales, offer terms and conditions, privacy policies, order fulfillment, customer service, and complaint response management. She has drafted numerous internal and external company policies and procedures on matters relating to the use of telemarketing, email, social media, pricing claims, product claims, affiliate marketing, and other marketing strategies. She also drafts, negotiates, and manages contractual relationships between marketers and vendors for marketing, fulfillment, customer care, public relations, applications development, communications and information technology services, and other business arrangements.

For more than a decade, Ms. Berge has been advising companies and nonprofits on federal and state Do Not Call and other telemarketing laws, including the Telephone Consumer Protection Act (TCPA), Federal Communications Commission rules implementing the TCPA, and the Federal Trade Commission's Telemarketing Sales Rule. She counsels clients on TCPA rules relating to calls and text messages to cell phones, including developments related to defining "autodialers" and obtaining proper forms of "prior express consent" under TCPA and FCC definitions. She has managed TCPA litigation and settled numerous private lawsuits and class actions involving alleged violations of Do Not Call and cell phone calling and texting rules.

Ms. Berge also advises clients on developments regarding Section 5 of the Federal Trade Commission Act, the CAN-SPAM Act, and various legal guidelines for the marketing of "free" offers, the use of negative option marketing and recurring shipping programs, and the use of endorsements and testimonials in advertising and social media. She also counsels clients on the creation and implementation of sweepstakes and contests, including mobile marketing and social media promotions. She works with in-house marketing, regulatory compliance, brand management, and legal teams to manage the creative clearance review process for a number of large national and multinational brands. She handles federal and state government investigations and law enforcement actions relating to advertising and marketing practices.

Merchant Transaction Processing

As an offshoot of her regulatory compliance work for e-commerce companies, Ms. Berge focuses a substantial portion of her practice in the area of payment processing, working with both merchants and payments companies to address the legal,

Webmaster, CommLaw
Conspetus, *Journal of
Communications Law and Policy*
B.A., University of Virginia, 1996

MEMBERSHIPS

American Bar Association
Direct Marketing Association
Electronic Retailing Association
Federal Communications Bar
Association
Brand Activation Association
Women's Bar Association of the
District of Columbia

operational, and business challenges of transaction processing. She frequently instructs major international and domestic brand owners and start-up entrepreneurs on merchant processing agreements, payment structures for processing services, interchange and other pass-through fees, chargeback management, fraud prevention, and data security. She has also worked with large product companies to launch direct-to-consumer sales channels by advising on contractual arrangements with billing solution providers, gateways, processors, chargeback managers, and other companies in the chain of transaction processing.

Working together with Venable's experienced and successful litigators, regulatory attorneys, and legislative advisors, she has represented numerous Independent Sales Organizations (ISO) and payment processors in government investigations and lawsuits by the Federal Trade Commission, the Consumer Financial Protection Bureau, and state attorneys general under Operation Choke Point and similar law enforcement initiatives that seek to hold ISOs and processors liable for the actions of their merchants. Based on those experiences, Ms. Berge frequently provides guidance to ISOs, payment processors, and banks on merchant underwriting and risk management policies. She has drafted and negotiated merchant processing agreements between processors and merchants, sales agreements between processors and ISOs, and card network sponsorship agreements between banks and processors.

Ms. Berge is a contributor to the working group that has developed and maintains the Electronic Transactions Association's (ETA) Guidelines for Merchant Underwriting and Risk Management. She serves on the Government Relations Committee of the Merchant Acquirers Committee (MAC) and is an active member of the Payment Processing Committee of the Electronic Retailing Association (ERA).

HONORS

Recipient of 2016 Corporate Intl Magazine Global Award: Advertising Law - Attorney of the Year in Washington D.C.

2014 International Law Office (ILO) Client Choice Award, E-Commerce, District of Columbia and Nationwide

Recognized in *Legal 500*, Marketing and Advertising, 2013 and 2014

PUBLICATIONS

- June 28, 2016, Continued Pressure for Transparency and Accountability in the Payments Industry, Financial Services Alert
- June 2016, CFPB and Financial Services Digest - June 2016, CFPB
- June 10, 2016, An old law creating new class action headaches, CFPB's proposed small-dollar loan rule, and more in this issue of Advertising Law News & Analysis, Advertising Alert
- June 2016, Small-Dollar Loan Proposed Rule FAQs, CFPB
- November 23, 2015, FTC Amends Telemarketing Sales Rule: Amendments Include a Ban on the Use of Certain Payment Mechanisms in Telemarketing and Clarification on Existing Provisions, Including the Business-to-Business Call Exemption, *All About Advertising Law Blog*
- May 28, 2015, FTC's Order against Payment Processor Highlights Liability Risks Posed by Aiding and Abetting Provisions, Financial Services Alert
- March 2015, Operation Choke Point Update, Client Alerts
- November 2014, CFPB Proposes Rule for Prepaid Products and Releases Study on Prepaid Account Agreements
- October 14, 2014, Payment Systems Today: Latest Legal and Regulatory Challenges
- October 14, 2014, Squeezed from All Sides: Payment Processors in the New Regulatory Environment
- October 7, 2014, A TCPA Win for Debt Collectors, *DRMA Voice*
- March 12, 2014, FTC Settlement Highlights Lead Generation "Warning Signs"

- March 1, 2014, Five Things You Need to Know about Advertising in the United States, *International Trademark Association (INTA) Bulletin*
- April 16, 2013, The FTC's Revised .com Disclosures Guide: What Third Party Advertisers and Lead Generators Need to Know
- March 14, 2013, FTC's Updated .com Disclosures Guidance, *DM Confidential*
- Fall 2012, The More Things Change, The More They Stay the Same: Applying Section 5 to Emerging Marketing Practices, *Antitrust*
- September 2009, The Download - September 2009 - Developments in E-Commerce, Privacy, Marketing, and Information Services Law and Policy, The Download
- April 21, 2009, Law Enforcement Risks for Advertisers, Affiliates & Networks; FTC Declares Identity Theft Red Flags Rule Applies to Health Care Professionals; FTC Asserts Jurisdiction to Investigate Security of Personal Health Data; Federal Stimulus Package Includes Dramatic Changes to Health Privacy and Security Law; NCTA v. FCC: The Use of Consumer Information for Marketing Purposes; Massachusetts Revises and Further Delays Implementation of New Data Security Regulations, The Download
- May 2008, FTC Issues New Regulations for CAN-SPAM Compliance: What Do the Rules Mean for Associations?
- May 2008, New CAN-SPAM Regulations Issued by the FTC
- September 7, 2006, Homeland Security Deskbook: Private Sector Impacts of the War Against Terrorism
- May 2006, The FTC's Proposed Business Opportunity Rule, *Electronic Retailer*
- November 2005, Frequency November 2005
- July 11, 2005, Update on Fax Laws: Congress Restores the "Established Business Relationship" Exception for Commercial Faxes
- June 2005, The Federal Spam Law: FTC Issues Additional Guidelines and Proposes New Rules for Complying with the *CAN-SPAM Act*
- May / June 2005, Is Your E-Mail Message "Commercial" under CAN-SPAM?
- October 2004, FTC Regs for CAN SPAM Act
- June 18, 2004, Frequency June 2004
- February 2004, The New Federal Spam Law: What Does it Mean for Associations?
- December 1, 2003, The CAN-SPAM Act of 2003
- November 2003, Frequency November 2003
- 2001, Who Knows Where You Are? Privacy and Wireless Services, *10 CommLaw Conspectus 1, 133 (2001)*

SPEAKING ENGAGEMENTS

Ms. Berge speaks frequently to various audiences on issues related to the CAN-SPAM Act, wireless messaging, and Do-Not-Call rules.

- June 2, 2015, "Hotel Loyalty Programs: What Does the Future Hold?" at the 37th Annual NYU International Hospitality Industry Investment Conference
- April 29, 2015, An Advertising Law Symposium Hosted by Venable LLP
- November 7, 2014, The 36th Annual BAA/PMA Marketing Law Conference
- October 20, 2014, Bridging the Gaps: An Advertising Law Symposium Hosted by Venable LLP
- October 14, 2014, "Payment Systems Today: Latest Legal and Regulatory Challenges" for ALI CLE
- May 21, 2014, "I'm from the Government and I'm Here to Help" at the Card Not Present Expo
- April 10, 2014, "Overview of the ETA's Guidelines on Merchant and ISO Underwriting and Risk Monitoring" at the ETA Transact 14 Conference
- April 10, 2014, "Understanding Operation Choke Point: The New Compliance Environment" at the ETA Transact 14 Conference

- March 11, 2014, Connecting the Dots: An Advertising Law Symposium Hosted by Venable LLP
- November 6, 2013, "Briefing: Regulatory and Enforcement Developments Involving the TCPA and TSR" for the Direct Marketing Association
- April 16, 2013, "The FTC's Revised .com Disclosures Guide: What Third Party Advertisers and Lead Generators Need to Know" for Venable and LeadsCouncil
- September 6, 2012, Legal Quick Hit: "New Targets for the FTC's Consumer Protection Mission" for the Association of Corporate Counsel
- May 22, 2012, "Fundamentals of Marketing and Advertising Law" at RCI International
- May 3, 2011 - May 5, 2011, Response Expo 2011
- February 28, 2011 - March 2, 2011, ERA's Great Ideas Summit
- December 11, 2008, Venable hosts "E-Tail Details 2.0: Online/Offline Advertising and Marketing Law"
- November 9, 2004, Association of Osteopathic State Executive Directors Conference



Erik Jones

Partner

Washington, DC Office

T 202.344.4438 F 202.344.8300

ecjones@Venable.com

AREAS OF PRACTICE

Congressional Investigations
 State Attorneys General
 Investigations and White Collar Defense
 Privacy and Data Security
 Regulatory
 Legislative and Government Affairs
 Communications

INDUSTRIES

Cybersecurity Risk Management Services

GOVERNMENT EXPERIENCE

Assistant Attorney General and Director of the Policy Bureau, Office of the Illinois Attorney General
 Deputy General Counsel and Chief Investigative Counsel, United States Senate Committee on Commerce, Science, and Transportation
 Counsel, United States House Energy and Commerce Committee
 Counsel, United States House Oversight and Government Reform Committee

Erik Jones is a partner in Venable's Washington, DC office, where he helps lead the firm's Congressional Investigations practice and works closely with the State Attorneys General and E-Commerce, Privacy and Data Security practices. He has significant investigatory and policy experience in state and federal government, as well as the private sector.

Prior to joining Venable, Mr. Jones served as an Assistant Attorney General and Director of the Policy Bureau for the Office of Illinois Attorney General Lisa Madigan. In this position, he was responsible for developing and managing the office's agenda through legislation, investigations, and outreach initiatives. Among his responsibilities, Mr. Jones served as the Attorney General's lead advisor on data security and privacy.

Previously, Mr. Jones was Deputy General Counsel and Chief Investigative Counsel to the U.S. Senate Committee on Commerce under Sen. Jay Rockefeller, where he helped create the Committee's Office of Oversight and Investigations and later served as its lead counsel on cybersecurity matters. Prior to his work in the Senate, Mr. Jones was Counsel to the House Committee on Energy & Commerce and Oversight & Government Reform, chaired by Rep. Henry Waxman. During his time in Congress, he helped direct more than 30 investigations and hearings.

Mr. Jones led and worked on a diverse range of congressional investigations related to e-commerce practices, privacy, telecommunications, transportation, energy, space policy, environmental regulations, product safety, the financial sector, health care, and government contracting. Notably, he led the Commerce Committee's investigation of abusive billing practices on the Internet and used the findings of the investigation to draft the Restore Online Shoppers' Confidence Act (ROSCA), signed into law by President Obama in 2010. While serving as counsel to the House Oversight Committee, he led the investigation that uncovered high levels of formaldehyde in trailers that the Federal Emergency Management Agency supplied to victims of Hurricane Katrina.

Mr. Jones has been especially active at the intersection of law and technology. He played a major role in congressional work on data security and technology issues, taking the lead in drafting and negotiating significant portions of the Cybersecurity Act. He led the Commerce Committee's survey of cybersecurity practices among Fortune 500 companies and helped push for the establishment of the NIST Cybersecurity Framework, the public-private partnership for developing cybersecurity standards. He also directed the first federal investigation into the privacy practices of data brokers and managed the Committee's Internet governance portfolio, which included ICANN's decision to expand top-level domain names.

While working in the Illinois AG's office, he helped develop and implement a plan to respond to the wave of data breaches affecting consumers. He was the primary staff attorney working with the AG who drafted and negotiated the first significant update to Illinois law on data security. He also directed efforts to educate Illinois businesses

BAR ADMISSIONS

Illinois

District of Columbia

EDUCATION

J.D., University of Michigan Law School, 2004

Associate Editor, *Michigan Journal of Law Reform*

B.S., *magna cum laude*, Southern Illinois University Edwardsville, 2001

MEMBERSHIPS

International Association of Privacy Professionals

American Council of Young Political Leaders

and residents on data privacy and data security issues, and participated in numerous investigations of significant data breaches affecting Fortune 500 companies. During his time with the office, Mr. Jones also initiated and led the Attorney General's inquiry into the collection of consumer medical information by websites and apps, led a statewide investigation into employers' use of payroll cards, successfully drafted and negotiated a law to regulate payroll cards, and drafted and negotiated a law aimed at patent trolls.

Mr. Jones began his career in private practice at an international law firm, where he split his time between the white-collar criminal defense practice group and the e-commerce and privacy practice group.

ACTIVITIES

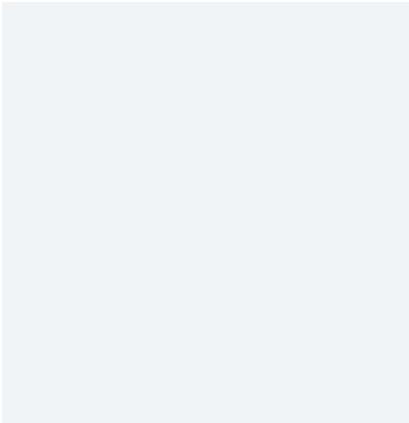
- Adjunct Professor, Illinois Institute of Technology Chicago-Kent College of Law

PUBLICATIONS

- June 28, 2016, Keep Calm and Carry On: Data Protection Post Brexit, The Download
- December 10, 2015, A Breach Can Happen to You (or Already Has, and You Just Don't Know It Yet): How Nonprofits Can Best Manage Cybersecurity Risk

SPEAKING ENGAGEMENTS

- April 28, 2016, Venable Lunch & Learn "Investigations, Regulation, and Legislation: How State AGs and Washington are Responding to Technology That's Changing the Way We Live and Work"
- April 6, 2016, "Privacy and Data Security Trends in the States" at the International Association of Privacy Professionals (IAPP) Global Privacy Summit 2016
- March 11, 2016, "State Enforcement and the Dietary Supplement Industry: What You Need to Know" at the Natural Products Expo West/Engredea Conference
- February 23, 2016, "Policy, Politics, and Consumer Trust in Digital Marketing" at the RampUp! 2016 Conference
- December 10, 2015, A Breach Can Happen to You (or Already Has, and You Just Don't Know It Yet): How Nonprofits Can Best Manage Cybersecurity Risk
- September 29, 2015, "The Cybersecurity Threat - What You Can't See *Can* Hurt You" at a M&T Bank, Wilmington Trust and Venable LLP Thought Leadership Breakfast
- March - April 2015, Witness at legislative hearings on data security before the Judiciary Committees for the Illinois Senate and House of Representatives
- July 2014, Witness at a hearing, "Data Security and Identity Theft" before the Finance Committee of the Chicago City Council
- June 2014, Speaker on a panel on patent trolls at the Association of Corporate Patent Counsel's summer meeting
- April 2014, Speaker on a panel, "Challenges in Assessing Medical Apps" at Chicago-Kent College of Law's conference on Medical Apps, Privacy, and Liability
- March 2014, Witness at legislative hearings on patent trolls before the Judiciary Committees for the Illinois Senate and House of Representatives
- March 2014, Speaker on a panel, "Regulation of Data Security" at Loyola University Chicago Consumer Law Review's Symposium on Consumer Privacy and Data Collection
- September 2013, Speaker on panel, "Framing Big Data and Privacy" at a conference cohosted by the Future of Privacy Forum and the Stanford Center for Internet and Society
- March 2013, Speaker on a panel, "The Data-Driven Way of Life: Threats and Solutions" at the Direct Marketing Association's "DMA in DC 2013" Program
- February 2013, Speaker on a panel, "Cyber Warriors: What do they do and how do we get more of them?" at the TechVoice DC Fly-In hosted by CompTIA

- 
- January 2013, Speaker in a breakout session on "Plumbing the Policy Implications of Data Analytics and Defining 'Big Data,' the Year's Most Overused Term" for the State of the Net Conference hosted by the Congressional Internet Caucus Advisory Committee
 - February 2012, Speaker in a webcast for Continuing Legal Education (CLE) credit on "Congressional Investigations 2012: How to Prepare for the Investigative Agenda in the New Year"
 - May 2011, Featured speaker at the Federal Trade Commission's Forum on "Examining Telephone Bill Cramming" and spoke on a panel, "Potential Solutions to the Cramming Problem"
 - October 2010, Guest lecturer for the University of California's Program "Law and Lawyering in the Nation's Capital" and jointly led a lecture on "Investigations by the Federal Government: Perspectives from the Executive Branch and Congress"

Jonathan Vanderveen



Global Co-Head
Chicago

Expertise

Monitoring/auditing/evaluating performance of organizations

- Jonathan Vanderveen is the Global Co-Head of Alvarez & Marsal Disputes and Investigations.
- Mr. Vanderveen's practice centers on assisting clients dealing with regulatory issues, litigation matters, post acquisition disputes, and internal investigations.
- In his fiduciary roles, Mr. Vanderveen is currently retained by one of the world's largest financial institutions to provide an independent assessment of a data integrity program established and implemented pursuant to a settlement (and related Consent Judgement and Order) with the FTC. The assessment is to be performed biennially for a period of eight years. In a separate assignment, Mr. Vanderveen is currently assisting a law firm monitor with respect to a settlement (and related SEC order imposing remedial sanctions) with a hedge fund.
- Mr. Vanderveen consults and testifies on litigation matters involving various financial and accounting issues, including accounting reconstruction, lost profit analysis, business interruption claims, financial compliance with contracts and the application of GAAP and GAAS in a financial statement audit.
- As a consultant on GAAP issues, Mr. Vanderveen assists clients (both sell- and buy-side) involved in post-acquisition disputes, including working capital, earn-outs, and other types of disputes. He has served as a neutral arbitrator on dozens of matters across a range of industries and issues.
- Additionally, Mr. Vanderveen assists clients facing financial statement restatements, accounting reconstructions, the inability to meet internal, external or regulatory reporting / audit deadlines, questionable financial transactions, delayed filings and potential de-listing. Mr. Vanderveen also consults to special committees of public companies surrounding allegations of improper financial conduct. His experience includes consulting to clients facing accounting irregularities, financial statement restatements, securities litigation claims, SEC or other regulatory inquiries / investigations and Department of Justice actions.
- Prior to joining A&M, Mr. Vanderveen was a Partner with a Big Four public accounting firm. He began his career as an auditor in public accounting, and subsequently spent several years in industry, holding various financial reporting positions at a public company. He later returned to public accounting in a consulting capacity.
- Mr. Vanderveen earned a bachelor's degree in accounting from Hope College. He is a Certified Public Accountant (CPA), Certified Fraud Examiner (CFE), a member of the American Institute of Certified Public Accountants (AICPA) and a member of the Association of Certified Fraud Examiners.



Edward McDonough



Managing Director
Phoenix

Expertise

Monitoring/auditing/evaluating performance of organizations

- Ed McDonough is a Managing Director with Alvarez & Marsal Disputes and Investigations in Phoenix. He has been providing accounting, dispute and forensic analysis, bankruptcy litigation and valuation services for 30 years. Mr. McDonough has testified in state and federal court, as well as in arbitration proceedings throughout the U.S. Mr. McDonough has worked with clients across a variety of industries. His clients range in size from small start-up companies to large publicly traded companies.
- Mr. McDonough has provided forensic accounting analysis in the investigation of various fraud schemes, including financial statement manipulation, fictitious vendors, fraudulent conveyance, debt financing, kickback schemes, shell entities, related party transactions, check kiting schemes, statutory investigations, state forfeiture actions, accounting irregularities, and Ponzi schemes. He has assisted legal counsel in analysis of audit practices and procedures relative to the application of GAAP for a publicly traded company. Mr. McDonough led several engagements providing due diligence in conjunction with a national structured sales transaction for the Resolution Trust Corporation.
- Over the course of his career, Mr. McDonough has provided expert witness testimony on damage analysis, business valuation matters, lost profits, causation and liability analysis, fraudulent transfers, preferences, account reconstruction, lost wages, covenants not to compete, and GAAP accounting issues in complex litigation matters.
- Mr. McDonough has worked with clients across a variety of industries, including casino/gaming, hotel/resort, multi-level marketing, construction, high technology, intellectual property, insurance companies, retail, broadcasting, internet-based business, manufacturing, distribution, telecom, cable, transportation companies, mining, golf courses, restaurants, healthcare, PBM, non-profits, service companies including professional service, real estate including office, apartment, timeshare, residential, raw land, golf courses and service business.
- Prior to joining A&M, Mr. McDonough was a Senior Managing Director with a publicly traded litigation consulting firm for four years. Previously, he was a Partner with the Financial Advisory Services group of PricewaterhouseCoopers. He also served as Controller / CFO for companies in the real estate/hospitality development industries.
- Mr. McDonough earned a bachelor's degree in accounting and a master's degree in administration from Arizona State University. He is a Certified Public Accountant (CPA) and a Certified Insolvency and Restructuring Advisor (CIRA). He holds the ABV and CFF designations from the AICPA, and is a member of the AICPA, the Arizona and Nevada State Society of Certified Public Accountants, the American Bankruptcy Institute, the Association of Insolvency and Restructuring Advisors, as well as an associate member of Certified Fraud Examiners, and the American Bar Association. He has served as a Chapter 7 and 11 Bankruptcy Trustee, Examiner, Receiver, and Special Master in State Court.



Douglas Anderson



Managing Director
Atlanta

Expertise

Information technology
Data management

- Douglas Anderson is a Managing Director with Alvarez & Marsal Disputes and Investigations in Atlanta, where he co-leads the Forensic Technology practice. Mr. Anderson has extensive experience in developing and implementing litigation technology solutions. His primary areas of concentration are Data Integrity and Analytics, Electronic Discovery, Computer Forensics and Litigation Readiness.
- With more than 25 years of experience in leading and performing complex investigative and litigation consulting assignments, Mr. Anderson has developed deep expertise in designing and applying technology-based solutions to resolve investigative and litigation related challenges.
- Most recently, Mr. Anderson was engaged by a major pharmaceutical manufacturer who had recently purchased substantial portions of another firm. In this role he led a team of professionals from both A&M and the client firm charged with the identification, carve-out and transfer of electronic data and paper records obtained as a result of the acquisition. The complexity of the task was compounded by the fact that a substantial portion of the data was under either litigation hold or discovery orders in five separate civil litigation proceedings. Mr. Anderson designed and implemented a program to successfully accomplish the identification, validation, acquisition, review, management and subsequent preservation and integration of approximately 16 million records obtained as a result of the purchase. Mr. Anderson has worked with clients across various industries, including the retail, financial, energy, pharmaceutical, manufacturing and government sectors.
- Prior to joining A&M, Mr. Anderson was a Principal with Grant Thornton, LLP in Miami, FL, where he served as the National Partner in Charge of the Forensic Technology Services practice and was responsible for the growth, operation and management of the practice. While at Grant Thornton, he was retained by a syndicate of 11 global reinsurance firms to provide the full range of data collection and analysis, advisory, collection, management and hosting services in support of a \$950 million dollar litigation. Mr. Anderson led a team of professionals who identified, collected and processed over 3.2 million individual electronic records from 14 individual locations throughout the US and Europe. Additionally, Mr. Anderson crafted and managed an analysis, review and reporting strategy for a team of 23 attorneys from three different law firms and reviewers located in three different US states and two foreign countries.
- Mr. Anderson earned a bachelor's degree in Management Information Systems from Rollins College and an MBA from Colorado Technical University. Mr. Anderson is a Certified Fraud Examiner and a member of the Association of Certified Fraud Examiners as well as the Association of Former AFOSI Special Agents.



Benjamin Wilner



Managing Director
Chicago

Expertise
Statistical and data analysis



- Benjamin Wilner is a Managing Director with Alvarez & Marsal Disputes and Investigations in Chicago. He is a Ph.D. economist and statistician who regularly serves as a consultant and expert witness on damages, economic & statistical issues. In addition to advising corporations and governments on economic and statistical issues, Dr. Wilner's disputes experience encompasses a broad range of single plaintiff, class action and criminal disputes and regulatory matters.
- Dr. Wilner's statistical consulting experience includes:
 - Built statistical models for the Office of Mortgage Settlement Oversight & National Science Foundation to identify alleged fraud
 - Retained by several large financial institutions to build statistical monitoring models responding to CFPB, Federal Reserve and state Insurance Department consent decrees
 - Received a special commendation from the Commissioner of U.S. Customs & Border Protection for building a statistical model to restructure a \$2.5 billion tariff, which won further praise by a Cabinet member, Congressional officials and the industry
 - Expert witness refuting statistical models claiming cheating on standardized examinations
 - Testified in several product defect class action matters regarding extrapolation
 - Redesigned statistical portions of an automobile manufacturers warranty process
 - Testified about statistical models measuring prison overcrowding
 - Submitted and defended 20 – 30 statistical sampling reports annually to the Internal Revenue Service
 - Expert witness regarding alleged misdelivery of daily newspapers
- Not only does Dr. Wilner bring the modeling skills he honed working with three Nobel Prize-winning economists (including one who won for statistical modeling) to his work, but he also utilizes his professorial teaching expertise to explain those models.
- Dr. Wilner has been a professor in the business schools at Northwestern University, the University of Michigan, the University of Iowa and the Helsinki School of Economics. His work has been published in leading academic journals, textbooks and the popular press as well as regularly cited in the academic and popular press. Dr. Wilner won several awards for teaching and research including a grant from the National Science Foundation.
- Dr. Wilner earned a Bachelor of Arts *magna cum laude* with distinction in major from the University of Pennsylvania, a General Course degree in Mathematics & Statistics from the London School of Economics and a Ph.D. in Managerial Economics and Decision Science from Northwestern University.

Appendix 2
Anticipated Hours & Budget

