ABA SECTION OF ANTITRUST LAW
MEMORANDUM

TO: Gary Zanfagna, ABA Antitrust Section Vice Chair
    Long Range Planning Committee

FROM: Consumer Protection Committee
       Trish Conners (Co-Chair)
       Kay Lynn Brumbaugh (Co-Chair)
       Lauren Aronson (Vice Chair)
       Daniel Blynn (Vice Chair)
       Joanna Bolton (Vice Chair)
       Antonio Di Domenico (Vice Chair)
       Ilunga Kalala (Vice Chair)
       Richard Lawson (Vice Chair)
       Daniel Savrin (Vice Chair)
       Alysha Manji-Knight (YLR)
       Michael Sherling (YLR)

DATE: March 18, 2019


I. Current State of the Consumer Protection Committee

   A. Description and Reflective Evaluation of Membership Levels, Diversity, and Growth. The
      Consumer Protection Committee had 250 members in 2010, 459 by 2015, and approximately 597 as
      of January 2019. Many of the membership goals identified in the 2015 Long Range Plan (“LRP”)
      have been achieved. The following were identified as goals in the 2015 LRP.

      1. Including Enforcers in Committee Leadership: Trish Conners (Florida Deputy AG) is Co-Chair of the Consumer Protection Committee and Richard Lawson (formerly with the Florida AG’s office) is a Vice-Chair.

      2. Expanding Involvement by Enforcers by Developing Enforcement-Related Content: Through Trish’s leadership in working with NAAG and individual state enforcers, relationships with state enforcers have been strengthened and many state enforcers are now participating in the Committee’s programming and publications. For example, a group of state enforcers prepare the state AG enforcement updates posted at least quarterly on Connect. State Attorneys General are regularly “spotlighted” in the What’s in Store? newsletter. State enforcement panel presentations are also presented jointly with the State Enforcement Committee at least twice a year, and several state enforcers have contributed or are offering to contribute to the newsletter and are assisting in the preparation and editing

   1 The template for the Long Range Plan included sections on the scope of the committee’s charter and whether the charter should be modified. Neither the CP Committee chairs nor the variety of members in SAL administration or leadership knew what that original charter was or where to locate it. Thus, we have not included those sections in this plan.
of the Committee’s Consumer Protection handbook currently in production. State enforcers have also been eager to assist with “Why CP/AT?” presentations at law schools over the past several years.

3. **Including In-House Counsel in Leadership:** The Committee has been particularly successful in this effort. Kay Lynn Brumbaugh (Chief Legal Officer of GIAC Systems) is Co-Chair of the Committee, and Ilunga Kalala (Privacy Counsel, Turner Broadcasting) and Joanna Bolton (in-house counsel with Dell) are Vice Chairs of the Committee. This is a significant increase in leadership participation by in-house counsel since 2015, and through their active, robust participation, the Committee is expected to continue to make great strides in developing membership in this area and content designed to attract in-house counsel to avail themselves of the Committee’s offerings, such as our Consumer Protection Compliance Handbook, currently in production.

4. **Attracting Law Students/Law Professors/Young Lawyers:** With our “Why CP?” programming aimed at law students and conducted at law schools, most recently in conjunction with “Why AT?” programming, and our Consumer Protection law student essay contest, we have reached a number of law students and hope to reach even more as we promote the essay contest. Our YLRs, Michael Sherling and Alysha Manji-Knight, are tremendous assets to the Committee and hope that their success on the committee (and recommended promotions) will attract other young leaders to our Committee.

5. **Attracting International Practitioners to Leadership:** Tony Di Domenico (Vice Chair) and Alysha Manji-Knight (YLR), are both Canadian practitioners and have been instrumental in organizing and leading programs with an international focus. A challenge is attracting attendance to these programs, but Tony has been extremely effective in developing membership from the international CP community, and as he does so, we believe programming attendance in this area will increase. Only two years ago, Tony put out the call for contributors to international developments updates that are posted from time to time on Connect. He now has dozens of volunteers from South America, Africa, Australia, Europe, and Asia who contribute to these updates.

B. **Level of Interaction with other Committees (including co-sponsored programs).** The three CP-focused committees, Consumer Protection, Privacy and Information Security (PRIS) and Advertising Disputes Litigation (ADL) work extremely closely together. We have a regular monthly call with the leadership of all three committees, the Consumer Protection Officer and our Committee Ops representative. We coordinate efforts each year to propose a full Consumer Protection slate of programs for Spring Meeting, and we regularly coordinate throughout the year on various programs and initiatives. In addition, the Consumer Protection committee works with non-CP related committees as well. For example, in 2018 we co-sponsored a program with the State Enforcement Committee regarding Deploying State Unfair and Deceptive Acts and Practices Statutes in Business-to-Business Litigation. On February 15, we co-sponsored with the State Legislation Committee a program on mandatory arbitration and class action waiver issues.

II. **Top 3 Accomplishments Since the Last Long Range Plan.**

As further explained below, three principal goals the Consumer Protection Committee hoped to achieve between 2015 and 2018 were (1) to define the role of the Consumer Protection Committee and establish its place within the Section of Antitrust Law, (2) expand membership, and (3) develop content.
A. **Defining the Role of the Consumer Protection Committee.** Over the past three years, the Committee has worked hard to enhance its substantive presence within the Section of Antitrust Law, consistently delivering content focused on marketing and advertising, its core competencies, expanding membership, particularly with respect to enforcers and international practitioners, and working closely with its sister consumer focused committees – PRIS and ADL – to regularly establish a robust Consumer Protection track for each Spring Meeting as well as collaborate on other programming, initiatives, and opportunities for advocacy throughout the year. The Consumer Protection Committee has particularly distinguished itself by putting together a variety of programming and regularly posting diverse substantive content directed at providing the latest information on consumer protection private litigation, state and federal enforcement, and international matters.

B. **Expanding Membership.** As reflected in detail in Section IA above, we have grown membership in the committee significantly and have successfully implemented several membership and diversity initiatives.

C. **Developing Quality Substantive Content.**

1. **Programming.** A key focus of the Committee has been and will continue to be on providing practical, timely content for our members, with at least nine programs through January and several more in planning. We provide monthly consumer protection update teleseminars. The programs are led by a different law firm each month which provides both variety and also opportunities to expand our membership. We also provide many other teleconference style programs on timely topics on a regular basis. In the Fall of 2018 alone in addition to our monthly Consumer Protection Update programs, we sponsored a Fireside Chat with the FTC’s James Cooper and a reception to introduce the FTC’s Andrew Smith and co-sponsored a program with the State Enforcement Committee regarding Deploying State Unfair and Deceptive Acts and Practices Statutes in Business-to-Business Litigation, among others. We have also reached out and developed relationships with many non-CP committees to partner on CP content and on antitrust content, where there is a nexus. These include Media and Tech, Trade Associations, Legislation, and Unilateral Conduct. Finally, for the third year, we worked closely with the PRIS and ADL to recommend a full and diverse Spring Meeting CP slate. We should also note that the leadership of the Committee actively assisted with the CP Conference in February. Trish Conners was a presenter, as were some of the vice chairs, and both she and Kay Lynn actively worked to recruit practitioners, particularly state enforcers and in-house counsel, to attend. The Conference was attended by nearly all of the Committee leadership as well.

2. **Connect Posts.** Our Committee leadership continues to regularly post substantive information on Connect for the benefit of our members. Through year-end 2018, the Committee had submitted 40 posts. These include information on CP Updates, invitations to programming and other events, and information regarding hot topics or breaking news related to CP.

3. **Newsletter and Other Publications.** While our newsletter continues to be published three to four times a year, the last one being issued in December and the next one to be published in March or April, our other publication efforts advancing but have been challenging. More detail is provided below.
II. Major Consumer Protection Policy or Substantive Issues within Committee's Jurisdiction Anticipated to Arise Over Next Three Years

A. FTC Recommendations following Conclusion of the Ongoing FTC Workshops. A number of the ongoing FTC workshops have had a CP focus and we expect that the FTC recommendations and policy statements that ultimately result from these workshops will impact enforcement priorities and create the need and the opportunity for the CP Committee and the related consumer focused committees, PRIS and ADL, to provide timely, substantive programming to advise our members on new enforcement priorities and approaches.

B. The Globalization of Consumer Protection Laws. As other countries expand their enforcement activities in the CP area and our membership is increasingly international as well, the CP committee and its related committees must keep up and continue to provide relevant content and programming. Having made international programming a priority over the last few years (and particular thanks to Tony Di Domenico and Alysha Manji-Knight), we are well positioned to continue to respond to the globalization of CP laws and enforcement regimes.

C. The Intersection of Social Media, the Internet and Consumer Protection. This is an evolving area with the regular emergence of new threats to consumers and new challenges for regulators. We will need to be nimble to address quickly new threats with useful programming as new issues arise.

III. Specific Long Term Plans to Strengthen Your Committee

A. Ongoing Activities and Plans for Growth.

1. Expansion of Membership.

   a) Attracting Plaintiffs’ Lawyers to Leadership: One area identified for growth in membership in the 2015 LRP was the private plaintiffs’ bar, but, as with the Section as a whole, it has been difficult to draw attendance from this particular group. We are attempting to draw plaintiffs’ lawyers into our programming offerings and as we cultivate interest in participation in these areas, we are hopeful to attract plaintiffs’ lawyers who practice in this area to leadership positions.

   b) Attracting More “Outside the Beltway” Lawyers. Prior to the new guidelines for in-person events, we were working on a plan to host regional outside-the-beltway CP practitioner networking events through law firms whose attorneys are active in our Committee, but this project has been put on hold in light of the new procedures.

2. Diversification of Membership. As explained above, we are focused on increasing and diversifying our membership in multiple ways, including increasing in-house and plaintiff’s bar membership, expanding the geographic reach of our membership, and encouraging law students to explore consumer protection as a practice area.

3. CLE/Committee Programs. We will continue to provide valuable, regular substantive content. It has been one of the strengths of this committee and it will continue to be.

a) **Publications.** We continue to work on our Consumer Protection Compliance Handbook. It has fallen behind in the publication schedule, but we are hopeful that the project team will be prepared to submit a draft to B&T in the first quarter of this year with a goal of publication by year-end 2019. We intend to submit a proposal for a new publication sometime during 2019. Our current thinking is that a shorter, practical publication, for example, a primer type book may be our focus. We welcome any suggestions and thoughts regarding this or other ideas for publications. We published the Claim Substantiation Handbook in 2018.

b) **Repackaging Content.** We are exploring ways to repackage and repurpose content, including the CPLD and Committee Programs, for various audiences, such as in-house counsel and international practitioners. We are brainstorming on ways to deliver content more topically so it is easier to find. In addition, CPLD was recently considered as one of the first publications to be offered as an e-book, and we look forward to working with our colleagues on the Content Delivery Task Force to further explore this opportunity. Lastly, along with other committees, our Committee is also exploring ways to deliver our content faster and more efficiently.

5. **Technology, CONNECT, and Innovative Content/Value Delivery.** We utilize the technology currently available. We are strong proponents of making our programming available by podcast, an initiative which garnered strong support at the Midwinter Leadership Meeting.

6. **Joint Activities with Other Committees/Entities.** As explained above, we work closely with PRIS and ADL. The three CP-focused committees have monthly leadership calls and coordinate on programming and publications throughout the year. Our coordination is a strength. We also coordinate with other committees from time to time as appropriate and are always willing to do so.

7. **Development of Future Leaders.** As explained above, we have very strong YLRs who are already obtaining significant leadership experience and we expect them to be promoted to VC positions in the near future. We are also intentional regarding giving responsibility to our VCs with a goal of positioning them to assume committee chair and other leadership positions. Finally, our new Young Lawyer Advisory Panel will serve to develop leadership of our committee.

8. **Other Recommended Resources, Support, or Initiatives.** As mentioned above, the ability to offer programming through podcasts would be a significant positive change. As further explained below, data about our membership and more flexibility with in-person events would assist our committee.

B. **Principal Challenges, Weaknesses, or Impediments to Operation of Your Committee - And Plans to Address.**

1. **Lack of Data regarding Our Committee Membership.** It is difficult to plan targeted events and initiatives without data regarding existing membership. For example, we’d like to know the geographic dispersion of our members so that we can determine where to focus some of our membership initiatives. Our understanding is that the ABA and
the Section have been concerned about sharing membership data even with Committee
chairs. While we certainly understand concerns regarding data use, there are ways to obtain
consent when members join committees and agreements that Committee chairs can make
regarding their intended use of such data. After all, we protect client confidences and data
every day. We are well-positioned to protect membership data similarly.

2. **New Policies regarding In-Person Meetings**: As the result of the new procedures
that prohibit law firms from even offering space for an event and that require all events to
be planned through Section administration (which is really terrific but already operated
leanly and is now stretched even thinner), we have had to put on hold membership initiatives
and events we had planned. For example, our plans for a Women in CP event in New York
that would feature a panel of in-house CP lawyers and would be hosted by the law firm of
one of our VCs (at no expense to the Section) had to be put on hold because of the new
policies. We are hopeful that by working with the Membership & Diversity Committee, we
will be able to put this program back on track.

cc:
Committee Operations Representative: Christy Thompson
Long Range Planning Committee Representative: August Horvath