

Kelley Drye & Warren LLP and BakerHostetler DSA Partnership Award Application

The law firms of Kelley Drye & Warren LLP and BakerHostetler (“we” or the “Firms”) jointly submit this application for the Direct Selling Association’s (“DSA”) Partnership Award. Both Firms have long served as trusted advisors to the DSA and many DSA member companies – providing day-to-day advice, supporting and advancing regulatory and policy initiatives on the federal and state level, and regularly authoring articles and speaking on notable legal developments. This submission focuses on the Firms’ contribution as industry partners in developing and administering the Direct Selling Compliance Professional Certification Program (DSCP-CP) in conjunction with DSA.

As longtime advocates for the industry, we recognize the threats posed by detractors of direct selling that seek to diminish the reputation and standing of the industry. Detractors commonly focus on outlier, one-off examples to cast a negative image of the broader industry that neglects to acknowledge that most direct selling companies dedicate extensive resources to legal and compliance functions and are committed to promoting compliant practices. We believe that bolstering the reputation of the industry as a whole relative to legal and compliance has positive effects on the industry, individual companies, and business.

We also recognize that legal and regulatory principles are not straightforward – and sometimes the best intentioned individuals can miss the mark. Moreover, intelligent and experienced professionals can respectfully disagree on certain gray areas of the law – particularly given attempts by certain regulators to move the needle and create new precedent and law.

At the same time, there are certain fundamental legal and compliance principles that we believe the entire industry should be committed to meeting or exceeding. Many of these principles are embodied in the DSA Code of Ethics. Others are more nuanced and require a more comprehensive understanding of the legal and regulatory underpinnings of those broader principles.

Development of the DSCP-CP

The Direct Selling Compliance Professional Certification Program (DSCP-CP) was the outgrowth of our collaborative discussions with DSA regarding ways that we could together provide a mechanism to train, teach, and test on key legal principles relevant to legal and compliance professionals in the direct selling industry. We have seen firsthand the demand for such trainings through contact with our clients, and also noted the success of similar programs in other industries and legal areas.

For example, the International Association of Privacy Professionals (IAPP) offers three separate certifications to demonstrate an understanding of issues related to privacy and data protection. The most popular certification offered by IAPP, the Certified Information Privacy Professional (CIPP) certification, provides “the most encompassing, up-to-date and sought-after global training and certification program for privacy and data protection.” IAPP promotes the CIPP certification as “help[ing] organizations around the world bolster compliance and risk mitigation practices, and arm[ing] practitioners with the insight needed to add more value to their businesses.”

Modeled after the IAPP, we set out to develop a curriculum that covered key legal and compliance principles with concrete examples and guidance that would be useful for all industry members. We worked with DSA and consulted with clients and others in the industry to draft course materials covering four key categories of issues, which we organized into modules:

- Claims substantiation and disclosures. This module provides an overview of federal and state regulation of claims generally, including the concept of net impression, standards for disclosures, and claim substantiation.
- Product and weight loss claims. This module addresses the standards for product and weight loss claims, including the distinction between permissible structure/function claims and prohibited drug/health claims for foods and dietary supplements
- Income and lifestyle claims. This module addresses income and lifestyle claims specifically, including the Direct Selling Self-Regulatory Council’s Earnings Claims Guidance and related guidance and precedent from the FTC.
- Compliance training, monitoring, enforcement programs. This module addresses the role of internal and external compliance functions and how to develop appropriate mechanisms to train, monitor, and enforce relative to compliance policies.

Launch of the Inaugural DSCP-CP in January 2021

The inaugural DSCP-CP took place in January 2021 with over 170 participants. The course featured:

- Four training modules on the key topics identified above delivered by the Firms with the compliance module including special guests from Momentum Factor, who offered their insights on technology and tools available to monitor, document, and remedy non-compliant claims made in social media;
- A 70+ page course book prepared by the Firms that summarizes key content from the modules and that was provided to each participant for future use and to help prepare for the DSCP-CP exam;
- A 50 question exam provided to participants on the final day of the course to test comprehension of the DSCP-CP content. While most participants passed on the first try, the Firms worked with a handful of participants who did not earn the requisite 80% in their first attempt. After one-on-one coaching by the Firms, each participant passed the final exam.

We also worked with DSA to develop the DSCP-CP seal pictured here and encouraged participants who successfully completed the course to use the seal in email signatures and social media to further build awareness for the program. We also developed and disseminated guidelines on usage of the seal.



Continued Success of DSCP-CP and Launch of Recertification

We have now promoted and delivered four iterations of the DSCP-CP in January 2021, October 2021, April 2022, and December 2022.

Each program has been successful and drew more than 50 participants – with a total of 338 participants from 70 companies successfully completing the program. Participants include lawyers, compliance professionals, marketing team members, and business executives. The program has been popular both with DSA member companies and non-member companies; 44 participants from 19 non-member companies have also completed the program. We believe this is important in promoting the mission of DSA and establishing a baseline understanding of key legal and regulatory principles outside of member companies.

We have heard consistently positive feedback from participants about the content and nature of the program. Given the certification expired for participants in the inaugural program in January 2023, we have also worked with DSA in recent months to promote recertification. Recertification will require a total of 12 Direct Selling Continuing Education (“DSCE”) Credits for recertification. To obtain recertification, participants must meet the following requirements over the two-year term of their certification to maintain credentialed status.

1. Participate in a 2 hour of DSCE recertification webinar session hosted by DSA, Baker Hostetler and Kelley Drye. The session may be viewed live or on demand. Quiz completion is necessary to obtain DSCE credit. The first live webinar will be April 12, 2023, 1:00 – 3:00 p.m. ET.

AND an additional 10 credits that can be gained by the following:

1. Attend DSA Legal track webinars
2. Attend DSA-hosted in-person sessions. Eligible sessions include DSA Legal and Regulatory Seminar, DSA ENGAGE (eligible sessions), and DSA Sales and Marketing Conference (eligible sessions). Registration confirmation and sign-off from a DSA staff member are required.

We have every expectation that the recertification program will be just as successful as the certification program itself. We also plan to periodically offer an updated version of the certification program so new entrants to the industry and/or members who have not previously obtained certification can do so.

Conclusion

While there is always more work to do, we believe the DSCP-CP has been effective in further enhancing industry understanding of key legal and compliance issues and building a foundation on which to build. We strongly believe that effective legal and compliance programs are good for industry and for business. We are grateful for DSA’s partnership and look forward to continuing to collaborate together on initiatives for years to come. Thank you for your consideration.

Nomination: Peter Marinello, DSSRC

I am writing on behalf of the Direct Selling Self-Regulatory Council (DSSRC) to nominate two outstanding law firms for the DSA Partnership Award. These firms have demonstrated a deep commitment to supporting industry self-regulation and have made significant contributions to its growth and success.

The first law firm I would like to nominate is Kelley Drye & Warren, LLP. The law firm has been a long-standing advocate of the direct selling industry, providing legal guidance and representation to numerous direct selling companies. Their attorneys have a wealth of knowledge and experience in the field of direct selling and have helped many companies navigate the complex legal and regulatory landscape. They have also been active members of the DSA and other industry organizations, providing valuable insights and thought leadership on legal and policy issues affecting the industry.

The second law firm I would like to nominate is Baker Hostetler. Baker Hostetler has also been a dedicated partner to the direct selling industry, providing high-quality legal services and support to direct selling companies of all sizes. They have a strong reputation for their expertise in direct selling law and have successfully represented clients in a wide range of legal matters, including regulatory compliance, intellectual property disputes, and contract negotiations. Their attorneys have also been active in industry organizations, serving on committees and task forces that help shape the future of the direct selling industry.

One of many examples of the exceptional industry guidance that Kelley Drye & Warren and Baker Hostetler have provided to the direct selling industry is their collaborative effort in designing and overseeing DSA's Direct Selling Compliance Certification Program (DSCCP). DSCCP is a certification program that is designed to help direct selling companies demonstrate their commitment to ethical business practices and compliance with laws and regulations governing the direct selling industry.

As part of their oversight of DSCCP, Kelley Drye & Warren and BakerHostetler administer a rigorous evaluation process that includes an assessment of a direct selling company's compliance policies and procedures, a review of their sales and marketing materials, and an evaluation of their training programs for sales representatives. Hundreds of direct selling professionals have availed themselves of the expertise of these two law firms and their work has amplified the importance of industry self-regulation and, consequently, has helped the DSSRC maximize the expenditure of its resources.

Having worked with both law firms for a number of years, I can attest that Kelley Drye & Warren and BakerHostetler have demonstrated a deep understanding of the unique challenges facing the direct selling industry and have worked tirelessly to ensure that their clients and other industry stakeholders are able to operate successfully and compliantly. Both law firms are deserving of recognition for their exceptional partnership with the direct selling industry.

I would be happy to provide greater detail regarding the noteworthy services that these two law firms have provided to enhance the credibility of the direct selling industry at your request, and I thank you in advance for your consideration of these nominations.

Nomination: Henry Wang, EVP, General Counsel and Corporate Secretary, Herbalife

As Executive Vice President, General Counsel and Corporate Secretary of Herbalife Nutrition, I write to nominate the law firms of Kelley Drye & Warren LLP and BakerHostetler for the DSA Partnership Award. Both firms have been heavily involved in representing and advising the direct selling industry for years and have helped the industry navigate attacks by industry opponents. The firms were also integral in the creation of the Direct Selling Self-Regulatory Council (DSSRC), which Herbalife was also a strong supporter of and which has sought to further establish the industry as comprised primarily of responsible actors committed to self-regulation. More recently, the firms worked hand-in-hand with DSA to launch the Direct Selling Compliance Professional Certification Program (DSCP-CP), a certification program modeled after other successful industry certification programs to teach and test on key legal and regulatory principles. I have encouraged my legal and compliance team to complete the DSCP-CP and those who have done so have consistently reported that the program was worthwhile and nicely distills difficult concepts into digestible pieces. At Herbalife, we strive to provide clear, direct guidance on claims policies to Distributors and others, but recognize that complex legal and regulatory issues do not always translate easily into teachable concepts. I believe the DSCP-CP has had a significant positive impact on industry comprehension of these key concepts. I also commend both firms on their coverage of the latest significant legal developments and the day-to-day guidance they provide the industry, whether on proposed FTC rules, changes to FTC procedure, or federal and state legislation. I understand that the DSCP-CP recertification program will soon be implemented and include coverage of notable key developments. This will help the broader industry stay up-to-date on key developments. While lawyers are sometimes seen as adversaries to business goals, the law firms also recognize that a commitment to legal and regulatory compliance – when done right – is good for business. I continue to believe that building the reputation of the industry through programs like DSCP-CP will ultimately accelerate growth and benefit the industry as a whole. In sum, I enthusiastically nominate the law firms of Kelley Drye & Warren LLP and BakerHostetler for the DSA Partnership Award.

Nomination: Brian Bennett and Melissa Brunton, DSA

In partnership with DSA, BakerHostetler and Kelley, Drye, and Warren launched the Direct Selling Compliance Professional Certification Program in 2021. The certification program sharpens executives' understanding of key concepts related to a company's compliance program that helps improve the reputation of companies and the industry. The establishment of this program came at a critical time as direct selling companies have been subject to increasing regulatory scrutiny.

Highly experienced and knowledgeable attorneys from the firms have devoted many hours to providing content to attendees through a 150 page comprehensive handbook and almost 50 hours of webinars. In only two years, 338 individuals have become DSCP-CP certified. The first class is scheduled to be re-certified this year.

The program has become ubiquitous amongst legal and compliance professionals at companies. 72% of DSA member companies have had at least one individual who is DSCP-CP certified. Forty-four non-members representing 19

companies have also been certified. The program's success has provided DSA a demonstrable benchmark to the Federal Trade Commission of our industry's adherence to consumer protection in the marketplace.

We look forward to continuing working on and expanding this program to include modules tailored explicitly to C Suite Executives and marketing professionals, among other audiences.

Nomination: Jonathan Gelfand, EVP Business and Legal Affairs, Beachbody, LLC

As Executive Vice President, Business and Legal Affairs at Beachbody, LLC I am writing to nominate BakerHostetler and Kelley Drye & Warren for the Partnership Award for their service and commitment to the DSA and support on other legal and regulatory challenges that have faced the DSA industry and our members.

Both firms have been strong advocates for the entire advertising and marketing industry, including the direct selling industry. They have participated in numerous FTC industry workshops consistently advocated against overzealous regulations, and been strong supporters of the Direct Selling Self-Regulatory Council. (the "DSSRC"). Both firms are among the most knowledgeable and experienced firms servicing the direct selling industry and they have provided enormous help and guidance to both the DSA and their member companies. Their commitment to this industry is best evidenced by two recent initiatives they have undertaken on behalf of the DSA:

Both firms have been actively involved in drafting comments on behalf of the industry and/or its members on the FTC's proposed Rule on earnings claims. The outcome of this rulemaking proceeding is vital to the future of the DSA industry and they have been instrumental in helping DSA leadership and member draft comments that will hopefully have an impact on the outcome.

Second, both firms have at their own expense designed and executed DSA's Direct Selling Compliance Certification Program (the "DSSCP"). This Program is designed to educate our industry members on the laws and regulations governing the direct selling industry and enable our member companies to establish an ethical and compliant business culture. This program has been a huge success thanks to the knowledge and expertise that both firms have brought bring to this project.

In addition to their unwavering support for the DSA industry both firms have been trusted advisors to many of the DSA's member companies. Their knowledge of FTC and other consumer protection has helped many companies in the industry navigate the continually evolving and challenging regulatory environment. Finally, I have personally worked with both firms and can say that they simply have always been amazing partners for our legal, regulatory, and strategic needs.

The DSA is fortunate to have both firms as a strategic partners and they are most deserving of the Partnership Award for the years of support and guidance they have provided.