

Consumer Protection

Consumer protection-related disputes encompass individual and class actions in a broad range of areas, including allegations of false advertising, consumer fraud and product liability, data breaches, and violations of the False Claims Act.

The Brattle Group has decades of experience in consumer protection matters. Our work spans many industries, including motor vehicles; food, beverages, and nutritional supplements; financial services; telecommunications; healthcare; and pharmaceuticals. The issues our clients face are complex and often require expertise in a variety of disciplines, such as economics, marketing, finance, and

statistics. Our consulting expertise is further enhanced by our global network of top academic and industry experts in these areas, who provide critically important insights into how companies operate in different industries. We are proficient in deploying this multidisciplinary expertise in a thoughtful and cost-effective manner.

KEY AREAS OF ANALYTICAL EXPERTISE

Brattle provides clients with unique expertise in analyzing the consumer choice data that are often at the heart of consumer protection and product liability disputes. Brattle Principal and Nobel Laureate Daniel McFadden pioneered many of the econometric and survey techniques used in these analyses, which are now broadly applied and accepted by the courts. Brattle's analytical expertise spans several areas, including:

Statistical and econometric analysis

Brattle maintains a specialized staff with expertise in advanced modeling and statistical techniques. Examples of such techniques include discrete choice modeling, difference-in-differences, hedonic regression, nonparametric regression, and synthetic control methods.

Survey and sampling design

Brattle professionals have supported leading experts in critiquing conjoint surveys in high-profile consumer protection matters and have broad experience designing and implementing such surveys. In addition, we have expertise in the design, implementation, and analysis of

many other survey techniques used to elicit information on how consumers perceive advertisements to identify which products consumers view as substitutes and assess damages arising from brand dilution.

Content analysis

Brattle's consultants have substantial experience using advanced techniques – including data collection, optical character reading, and automated speech recognition – to collect and analyze documents, communications, and web-based information. We also have experience applying big data analysis techniques to draw out and analyze patterns and trends in content.

Large database analysis

Brattle experts have vast experience constructing large, high-quality datasets – often from unrelated sources and incongruent formats – using highly efficient programming techniques. We also have broad capabilities in analyzing both publicly available and enterprise-specific datasets.

Our consultants and experts use our multidisciplinary expertise and data analytics capabilities to answer key questions, develop evidence, and provide testimony in consumer protection matters.

REPRESENTATIVE ENGAGEMENTS

We have applied our analytical methods to consumer protection and product liability cases involving putative classes of plaintiffs as well as litigation involving a single plaintiff, often a government agency or a competing firm. Brattle has considerable experience with both types of cases, and we tailor our analyses to match the demands of each case. Our work spans numerous industries, and we have developed particular institutional knowledge in a number of specialized areas.

MOTOR VEHICLES

Consumer class action involving ATVs

Brattle assisted Polaris, a US manufacturer of all-terrain vehicles (ATVs), in obtaining a victory at the class certification stage of a closely watched product liability case. The plaintiffs alleged that Polaris failed to disclose information on alleged exhaust heat issues in thousands of its ATVs, causing consumers to overpay for these models. Brattle expert testimony explained that both the survey-based analysis of demand and the equilibrium model that the plaintiffs' experts used to determine the amount of the alleged overcharge were unreliable. The judge denied certification of the class, ruling that the plaintiffs' expert-driven overcharge theory was insufficient to meet class certification requirements. Brattle also recently assisted in overcoming the appeal to this case at the Eighth Circuit.

General Motors consumer class action

Working on behalf of General Motors (GM), we rebutted the plaintiffs' claims that GM's alleged failure to provide earlier notice of recalls related to ignitions, side airbags, and power steering systems caused consumers to overpay for new GM cars incorporating these components. Our analysis showed that the plaintiffs' experts failed to calculate the amount of this overpayment by providing a survey-based analysis that could – at best – only capture the demand side of the market. Consistent with our findings, the court concluded that the plaintiffs' analysis of conjoint survey data did not meet the requirements of their "benefit of the bargain" damages theory. The final settlement was less than 1% of the plaintiffs' original \$17 billion damages claim.

FOOD, BEVERAGES, AND NUTRITIONAL SUPPLEMENTS

Dispute against a multinational food and beverage corporation

We worked on behalf of a multinational food and beverage company that had been accused of making false claims about the nutritional benefits of its popular snack products. A Brattle team critiqued the opposing experts' analyses, which purported to assess the market price premium that the company had been able to command due to the alleged

false claims. While the plaintiffs' experts asserted they were assessing a market price premium, we demonstrated that they only considered consumers' willingness to pay – the demand side – but failed to address the supply side in their analyses. As a result, the plaintiffs failed to describe a workable approach for determining the alleged price premium on a class-wide basis.



Class certification in alleged false advertising case involving nutritional supplements

Our client, a producer of branded nutritional supplements, had been accused of collecting a market price premium on its products due to alleged false claims appearing on the product label. Brattle's expert testified that the plaintiff's expert failed to describe a workable approach for determining the damages associated with this price premium on a class-wide basis. In particular, Brattle's expert explained that the plaintiff's proposed use of conjoint analysis to assess the price premium was unworkable because conjoint survey data only consider demand-side factors, whereas a price premium would be the product of both supply and demand factors. Brattle's expert also explained that the plaintiff's proposed use of a hedonic analysis was unworkable because the available data would not allow for a separate estimation of the price premium.

Lanham Act litigation pertaining to Super Bowl advertisement

We worked for a major beverage manufacturer in a Lanham Act dispute, supporting multiple experts in establishing liability and damages. Our liability reports used evidence from the likelihood of deception experiments, social media studies, customer complaints, and company documents to demonstrate that the campaign had deceived customers and that the impact was material. Our damages report used a sophisticated econometric model to demonstrate that the campaign had reduced our clients' sales and profits.

FINANCIAL SERVICES

False Claims Act (FCA) cases

Brattle has been involved in numerous FCA cases, from the investigation stage through litigation. We work extensively with proprietary, government, and publicly available datasets and with economic, actuarial, and industry experts to cover a given case's full range of issues. In FCA matters, Brattle plays several complementary roles: forensic analysts, to identify and trace patterns in activity or financial metrics; big data analysts, to extract and summarize the relevant information from unstructured information sources; and financial and economic experts, to determine the effects of alleged misconduct and provide expert testimony.

Matter in front of the CFPB

Brattle supported an academic expert in litigation involving credit service products. The Consumer Financial Protection Bureau (CFPB) accused our client of misleading consumers into signing up for the service by relying on affiliated referral firms that made false promises about the services provided. Our analysis found that the company's compliance procedures adequately informed would-be customers of the services that the company did and did not perform. Our analysis further found that the economic evidence does not support the CFPB's claims.

TELECOMMUNICATIONS

Consumer class action involving wireless carrier

On behalf of Cricket, a pre-paid wireless carrier owned by AT&T, rebutted the opposing experts' claims that Cricket had oversold its 4G capabilities to customers who lived in 3G zones, thereby causing these customers to overpay for their 4G/LTE-capable smartphones. Showed that: (i) Cricket's strategy for advertising its 4G/LTE network in a forward-looking manner was consistent with standard industry practice and (ii) plaintiffs' damages model was irretrievably flawed because it did not control for differences in key features between 3G and 4G phones that did not have to do with network capability. The Judge agreed, decertifying the class and denying as moot plaintiff's motion to amend class certification.

US telecom investigation

A Brattle team assisted a large telecom company during an investigation brought by a US agency that pertained to alleged false advertising of internet speeds. We used a broad array of data sources – including engineering data – to demonstrate that the company delivered what it had promised. Our analysis showed that reasonable adjustments to the agency's model would significantly reduce the number of potentially impacted customers. In addition, we estimated a discrete choice model to measure consumer harm and illustrated that any potential damages were significantly lower than the agency's projections.

HEALTHCARE AND PHARMACEUTICALS

Alleged disparagement and false advertising in pharmaceuticals

Brattle worked for a large pharmaceutical manufacturer that alleged disparagement and false advertising by a competing manufacturer of an over-the-counter pain reliever in its communications with physicians. Our team analyzed survey data on consumer and physician choices, applied economic theory to assess the effect of misinformation on new product sales, and created a damages model to project the likely trend in sales of the plaintiff's drug but for the alleged violations, and to quantify the plaintiff's losses.

Alleged false representations in health insurance provider networks

A Brattle economist recently provided an evaluation of a survey proffered by the plaintiffs in an ongoing health insurance litigation in which a class of plaintiffs claimed that a health directory of providers was inaccurate and overstated the size of the network. The plaintiffs retained an expert who conducted a survey of providers that the expert claimed measured the accuracy of health insurers' provider networks. Our review determined that the survey contained significant methodological flaws in its design and implementation, rendering its findings unreliable.

Assessments of damages arising from data breaches in the health insurance industry

A Brattle team worked on a class-action lawsuit related to a high-profile breach of a health insurance provider's data. We conducted numerous analyses and prepared reports explaining how to quantify the damage inflicted on the individuals whose personal data was misappropriated. Using a novel approach, we demonstrated how to use data related to dark web sales of personal information to objectively measure consumer losses from the breach.

CONTACT US

For additional information about our work and expertise in this practice, please visit brattle.com/practices/consumer-protection-consumer-liability/.



Lisa J. Cameron

PRINCIPAL | BOSTON

Lisa.Cameron@brattle.com

+1.617.864.7900



Steven Herscovici

PRINCIPAL | BOSTON

Steve.Herscovici@brattle.com

+1.617.864.7900

ABOUT BRATTLE

The Brattle Group answers complex economic, regulatory, and financial questions for corporations, law firms, and governments around the world. We aim for the highest level of client service and quality in our industry.

We are distinguished by our credibility and the clarity of our insights, which arise from the stature of our experts; affiliations with leading international academics and industry specialists; and thoughtful, timely, and transparent work. Our clients value our commitment to providing clear, independent results that withstand critical review.

Brattle has 500 talented professionals across North America, Europe, and Asia-Pacific. For additional information about our experts and services, please visit brattle.com.

NORTH AMERICA

EUROPE

ASIA-PACIFIC