

ALSTON & BIRD

Materials Prepared for

Weight Watched Inc.

Regarding

WEIGHT LOSS, Inc. v. Weight Watched Inc.

September 2016



ALSTON & BIRD



DATE XX, 2016

Laurie Robinson
General Counsel
Weight Watched Inc.
123 Weight Watched Street
Atlanta, GA 30309
laurie.robinson@weightwatched.com

Re: Alston & Bird Materials Prepared for Weight Watched Inc. Regarding
WEIGHT LOSS, Inc. v. Weight Watched Inc.

Dear Laurie:

Enclosed please find Alston & Bird's materials prepared for Weight Watched Inc. regarding the case *WEIGHT LOSS, Inc. v. Weight Watched Inc.* We appreciate the opportunity to present our capabilities in these areas.

We have provided our preliminary claims assessment and outlined an initial strategy to resolve the dispute with *WEIGHT LOSS, Inc.* regarding the defamation, trademark infringement, patent violation and breach of contract claims at issue. We have also included our staffing plan, relevant experience, proposed fee information and a sample budget for this engagement.

We realize that this is a business problem, not just a legal problem, and we are dedicated to providing representation that aids and guides not only your legal response but also coordinates with any relevant public relations and crisis management efforts to minimize the potential negative impact on Weight Watched Inc. in the marketplace. This litigation has the potential to adversely impact the company's brand and reputation, its employees, customers, and other stakeholders, and its financial performance and market position vis-à-vis its competitors. We focus on minimizing any distractions from your daily business and developing strategies that will protect and enhance your company's reputation.

With your input and guidance, we will staff the litigation in a way that is efficient and cost-effective and that also takes full advantage of our prior experience, knowledge, and subject matter expertise. We believe in lean staffing, with subject matter experts and consultants coming in **only as needed** to assist in a cost-effective and efficient manner. To be clear, although I have included a number of attorney profiles in the staffing plan, I have done so only to highlight the breadth and depth of our capabilities and the talent of the resources available to Weight Watched Inc. We will work with you and obtain your approval on any proposed staffing to ensure that we are efficient and cost-effective and do not "over-lawyer" this matter.

Diversity is a core value that Alston & Bird and Weight Watched Inc. share. In our experience, a diverse team provides the best results for our clients. We have included information about the firm's commitment to diversity in Appendix B for reference. We welcome the opportunity to meet with you and your team to discuss this proposal. Many thanks again for the opportunity to represent Weight Watched Inc. I look forward to speaking with you further about this engagement at your convenience.

Sincerely yours,

Cari K. Dawson



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Alston & Bird Proposal for Weight Watched Inc.



Case Assessment and Claims Analysis

Early Case Assessment and Project Charter

Alston & Bird’s initial analysis of the claims in this matter is presented in the table below. In order to more fully understand the issues and goals, we propose to conduct an early case assessment with Weight Watched Inc. that would identify the scope of work and the objectives of the matter. Case assessments are an integral part of Alston & Bird’s approach to matters incorporating legal project management tools and techniques. An initial scoping session would be conducted **at no cost** to Weight Watched Inc. and would outline the key stakeholders involved, success factors, risks and assumptions. A sample project charter template is included in Appendix A. Based on our review of the claims and unknown factors, the scoping session would address questions such as:

- Trademark definition, usage, registration and possible assertion and enforceability strategies between WEIGHT LOSS Inc.’s marks and Weight Watched Inc.’s marks.
- Contract terms and provisions regarding the development, usage and release of the app, including any confidentiality requirements or other covenants that were defined.
- Identification and documentation of any statements allegedly made by Weight Watched Inc.’s employees when discussing WEIGHT LOSS, Inc.’s business practices, services, pricing, and customer experience; and subsequent value of any damages received resulting from the statements.
- Prior art analysis of Weight Watched Inc.’s patent portfolio and potential for § 101 defense strategies involving invalidity of the products and value of potential damages.

Claims Analysis

WEIGHT LOSS, Inc. (Plaintiff)	Weight Watched Inc. (Defendant)
<p>Defamation and Slander Per Se</p> <ul style="list-style-type: none"> • Alleges damages as a direct and proximate result of Defendant’s false and defamatory statements • Alleges that one or more of the Defendant’s employees made statements to one or more prospective customers that plaintiff was ineffective, charged outrageous prices and that some customers died using plaintiff’s products • Contends plaintiff was defamed when customers contacted defendant as a result of confusing app name and mark <p>Tortious Interference</p> <ul style="list-style-type: none"> • Alleges tortious interference with actual and perspective contracts <p>Trademark Infringement</p> <ul style="list-style-type: none"> • Alleges trademark infringement of the plaintiff’s name • Contends that customers were confused by the defendant’s app name and mark 	<p>Breach of Contract</p> <ul style="list-style-type: none"> • Contends that plaintiff and defendant initially entered into a contract to collaborate on the development of an app until plaintiff breached the initial contract <p>Misappropriation of Trade Secrets</p> <ul style="list-style-type: none"> • Counter claim alleging plaintiff ultimately used defendant’s trade secrets in the development of plaintiff’s app <p>Patent Infringement</p> <ul style="list-style-type: none"> • Counter claim alleging patent infringement in that plaintiff ultimately used defendant’s technology to build plaintiff’s app



Staffing Plan

Based on the initial claims analysis, we have identified potential team members to defend Weight Watched Inc. consisting of partners and associates with experience in both intellectual property issues as well as strong trial and dispute resolution skills. We propose that Christy Eikhoff supervise this engagement. Christy is best suited to lead the team on this engagement given her history representing clients in significant and high profile, complex commercial litigation matters involving claims of breach of contract, business torts and defamation. We also propose senior associate Elizabeth Broadway Brown and associate Jordan Edwards as potential team members. Additional subject matter experts who are available resources if needed include Partner Holly Saporito and associate Nadya Sand, who have expertise in patent and trademark infringement claims, and Partner Daniel Norris, who has subject matter expertise in misappropriation of trade secrets and other commercial litigation matters. Cari Dawson, our proposed relationship partner for Weight Watched Inc., will ensure that the matter is staffed leanly and facilitate communications with Weight Watched Inc. in-house counsel.

Proposed Team Member Information

Breach of Contract, Tortious Interference and Defamation



Christina Hull Eikhoff

Partner
Atlanta, GA

- Specialty in significant and high profile complex commercial litigation involving intense media scrutiny.
 - Represents clients in state and federal trial and appellate courts nationwide and in alternative dispute resolution forums and has handled several multimillion-dollar cases.
 - Extensive experience in trial, arbitration hearings, mediation, written advocacy, settlement negotiations, and discovery management.
 - Featured by the *Daily Report* in its "On the Rise" issue as one of the "40 Georgia Legal Rising Stars to Watch."
 - Achieved summary judgment ruling dismissing all claims in \$50 million defamation action.
 - Graduate of the University of Georgia.
-



Elizabeth Broadway Brown

Senior Associate
Atlanta, GA

- Specialty in business and commercial litigation, with an emphasis on class action and privacy litigation.
- Named a *Georgia Super Lawyers* "Rising Star" in 2014 and one of The National Black Lawyers – Top 40 under 40 in Georgia in 2015.
- Served on the trial team for a Fortune 50 computer and technology manufacturer engaged in a complex breach of contract and accounting dispute.
- Graduate of the University of Georgia and Florida A&M University.



Jordan Webber Edwards

Associate
Atlanta, GA

- Specialty in commercial litigation.
- Graduate of Emory University and Spelman College.
- Received the Dean's Award for Outstanding Academic Achievement in the Legal Writing, Research & Advocacy Program as well as the ABA/BNA Award for Excellence in the Study of Health Law.

Trademark and Patent Infringement



Holly Hawkins Saporito

Partner
Atlanta, GA

- Specialty in intellectual property litigation and counselling with an emphasis on patent and trademark litigation.
- Represents clients in the computer software, web-enabled services, payment systems, telecommunications, energy management systems, and pharmaceuticals industries and has experience litigating between direct competitors and against non-practicing entities.
- Counseled a client alleging theft of trade secrets and breach of contract, ultimately recovering \$38 million plus a sizable running royalty on all future sales.
- Graduate of The George Washington University and Pennsylvania State University.



Nadya Munasifi Sand

Senior Associate
Atlanta, GA

- Specialty in domestic and international trademark and copyright portfolio management, prosecution, enforcement, litigation, and counseling.
- Experience in federal and state court litigation, as well as handling contested matters before the Trademark Trial and Appeal Board, the National Advertising Division of the Better Business Bureau and domain name arbitrations brought under ICANN's Uniform Domain Name Dispute Resolution Policy.
- Graduate of Vanderbilt University and Emory University.

Misappropriation of Trade Secrets and Trial/Arbitration



Daniel C. Norris

Partner
Atlanta, GA

- Specialty in complex commercial litigation, including litigation arising from intellectual property rights and contractual disputes.
- Recovered nearly \$220 million for clients in jury trials and arbitrations.
- Obtained a unanimous arbitration award of \$40 million in lump sum damages plus a running royalty worth millions for a client alleging theft of trade secrets.
- Represented a client alleging breach of contract and breach of warranty resulting from the defendant's sale of defective component goods used in the client's manufacturing process and obtained a verdict worth more than \$90 million.
- Graduate of Florida State University and Southern Methodist University.



Fee Information

As proposed above, the initial scoping session will serve to identify critical issues for consideration, establish a strategy that aligns with Weight Watched Inc.'s business goals, properly budget the matter to provide greater cost certainty, and give Weight Watched Inc. the information it needs to choose a best fit fee structure. Following the scoping session, provided at no cost, we propose to outline a detailed matter timeline and schedule to handle the engagement. At that time, we would develop a detailed case budget with estimated fees for each phase of the matter in order to help Weight Watched Inc. better manage its internal financial controls and communicate expectations and status with company stakeholders.

Attorney Rates

For initial consideration, the following represents the hourly rates that the firm would charge Weight Watched Inc. for this engagement if a standard hourly structure is chosen. As evidenced below, we are offering a discount off of each attorney's normal standard rate and will make efficient use of paralegal help in order to give Weight Watched Inc. greater cost savings in what could be a somewhat unpredictable matter.

Team Member	Position	Standard Rate	Discounted Rate
Breach of Contract, Defamation and Business Torts			
Christina Hull Eikhoff	Partner	\$XXX	\$YYY
Elizabeth Broadway Brown	Senior Associate	\$XXX	\$YYY
Jordan Webber Edwards	Associate	\$XXX	\$YYY
Trademark and Patent Infringement			
Holly Hawkins Saporito	Partner	\$XXX	\$YYY
Nadya Munasifi Sand	Senior Associate	\$XXX	\$YYY
Misappropriation of Trade Secrets and Trial/Arbitration			
Daniel C. Norris	Partner	\$XXX	\$YYY
Case Support			
Litigation Paralegals	Paralegals	\$XXX	\$YYY

We are willing to discuss the use of a blended hourly rate in which various timekeeper levels are blended based on a mutual understanding of how the work should be staffed. This would provide added assurance that Weight Watched Inc. would pay an appropriate average rate for the level of services. Additionally, there is the possibility of using a split blended rate in which we would charge Weight Watched Inc. a different blended rate depending on the phase of the matter. For example, in this scenario we may charge a lower blended rate during the discovery phase when more associate time is devoted to the matter and then charge a higher blended rate if the litigation proceeds to the trial preparation stage, when more partner involvement would be required.



Sample Budget

A generalized example of what an initial budget might include is below. Naturally, we would seek to flesh out as much information in the final budget as possible including timekeepers, rates, estimated hours, total fees, tasks, and phases, among other information. The final budget would then be used and revisited throughout the engagement in order to ensure that quality legal services are delivered with maximum efficiency, cost effectiveness, and clarity to Weight Watched Inc.

Phase 1	Proposed Estimated Fees
Additional fact/document gathering/review and witness interviews, discovery, drafting of settlement or litigation strategies...	\$X,XXX to \$X,XXX
Phase 2	Proposed Estimated Fees
Pre-litigation settlement efforts....	\$X,XXX
Mediation – includes drafting of initiation of mediation, mediator selection process, mediation brief, preparation for mediation, attendance at mediation, and post-session negotiations.	\$XX,XXX to \$XX,XXX
Phase 3	Proposed Estimated Fees
Prepare pleadings and motions	\$X,XXX
Attend motion hearings	\$XX,XXX to \$XX,XXX
Additional pre-litigation activities...	\$X,XXX to \$X,XXX
Phase 4	Proposed Estimated Fees
Trial Preparation	\$X,XXX to \$X,XXX
Trial	\$X,XXX to \$X,XXX
Post-Trial Motions, etc.	\$X,XXX to \$X,XXX
Total Estimate	\$XXX,XXX to \$XXX,XXX



Relevant Experience

Alston & Bird LLP has directly applicable experience and expertise needed to represent Weight Watched Inc. in the successful resolution of this lawsuit. We have included below a list of our experience relevant to the current claims Weight Watched Inc. is facing and alleging in this case.

- **Breach of Contract** – Secured a \$106 million district court jury verdict for clients Mylan Inc. and Mylan Pharmaceuticals, the only U.S.-headquartered generic and specialty pharmaceutical companies, in a dispute against GlaxoSmithKline LLC (GSK) regarding a breach of contract claim over the production and sale of a generic formulation of Paxil CR, a popular antidepressant. In 2007, GSK signed an agreement granting Mylan an exclusive right to market and sell paroxetine hydrochloride, the generic name for Paxil CR. Breach of this original agreement led to this new dispute, and after a nine-day trial held in March of 2014, the jury found GSK breached that agreement by subsequently allowing a third party, Apotex, to sell generics of the drug in 2010.
- **Breach of Contract** – Represented a textile manufacturer against a component supplier alleging breach of warranty and breach of contract resulting from the defendant's sale of defective component goods used in our client's manufacturing process. After a three-week jury trial, our client won a verdict worth more than \$90 million including substantial damages for the replacement of defective goods, lost profits from the discontinuation of the affected product line, attorneys' fees, and prejudgment interest.
- **Breach of Contract** – Lead counsel for India-based software company in arbitration arising from alleged breach of contract involving the purchase of an airplane scheduling software business. Positioned case for early mediation and secured an early settlement through mediation.
- **Breach of Contract and Tortious Interference** – Represented a lender in an Illinois action seeking foreclosure and defending against the borrowers' claims for breach of contract, fraud, conversion and tortious interference of contract and numerous claims by subcontractors relating to their allegedly superior mechanic's liens. The lender obtained its objective of selling its interest in the real estate collateral.
- **Tortious Interference and Defamation** – Represented a Middle Eastern airline in defending against a former employee's claims for tortious interference with prospective relations, intentional infliction of emotional distress, defamation, business disparagement and exemplary damages.
- **Tortious Interference and Defamation** – Won a defense verdict for one of the nation's largest resellers of high-end computer servers in a case claiming libel, slander, tortious interference and RICO claims arising out of alleged misrepresentations concerning computer servers recovered from near the World Trade Center disaster area.
- **Defamation** - Ending more than two years of contentious litigation often covered by the tabloid press, a Fulton County judge informed all parties that summary judgment (and potentially a portion of fees and costs) would be awarded to all Defendants in a defamation action arising from statements made on the VH1 hit reality TV show "Love and Hip Hop Atlanta." Alston & Bird was lead defense counsel, representing NFGTV, Inc. and Monami Entertainment, LLC, the two TV production companies that make the show, alongside counsel for co-defendants Viacom and cast member/musician K. Michelle. This engagement came to us through our strong relationship with Hiscox Insurance, who defended the case under the show's Media Liability insurance policy. Read more about the case in our [press release](#) and in the article from the [Daily Report](#).
- **Defamation and Patent Infringement** – Represented an Ohio-incorporated prison telecommunications company in three related lawsuits involving claims for tortious interference, defamation and patent infringement. Obtained a favorable global settlement of all three matters.
- **Patent Infringement** – Counsel to a specialty chemical manufacturer in successfully obtaining a TRO against a direct competitor in a patent infringement lawsuit.
- **Patent Enforcement** - Counsel to plaintiff, a leading prepaid and payment solutions provider, in successful patent enforcement action against direct competitor.



- **Patent Infringement and Tortious Interference** – Represented inmate telecommunications provider in trio of federal lawsuits alleging patent infringement and tortious interference.
- **Tortious Interference, Trade Secrets and Patent Infringement** – Represented complainant Richtek Technology Corp. and Richtek USA, Inc. in a Section 337 investigation based on trade secret misappropriation and patent infringement. Rather than face trial, each of the respondents entered into a Consent Order and/or signed settlement agreements. We currently represent Richtek in an Enforcement proceeding at the ITC to enforce one of the Consent Orders. Certain DC-DC Controllers, Inv. No. 337-TA-698 (International Trade Commission)
- **Trade Secrets and Patent Infringement** – Obtained a permanent injunction and a \$2.7 million jury verdict in this trade secret and patent case leading to a final judgment, inclusive of enhanced damages and attorneys' fees, of over \$4.6 million. On appeal, the Federal Circuit affirmed the district court's judgment in all respects. 303 F.3d 1332 (Fed. Cir. 2002). BBA Nonwovens Simpsonville, Inc. v. Superior Nonwovens, LLC (D.S.C.)
- **Trade Secrets** – Represented a manufacturer in a five-week arbitration involving theft of industrial manufacturing trade secrets, in which the client obtained a unanimous arbitration award for \$40 million in lump sum damages plus a running royalty worth millions more.
- **Trademark Infringement** – Counsel to a large restaurant franchisor in obtaining summary judgment in a trademark infringement lawsuit in federal court in which the plaintiff sought a nationwide injunction against use of the company's mark.
- **Trademark Enforcement** – Counsel to a multi-brand restaurant operator, international, upscale retailer; large insurance company; international hotel chain; and social networking website, in connection with trademark and domain name enforcement activities.



Appendix A



Project Charter Template

Detailed Engagement Agreement of Scope of Work Statement

Project / Matter Title
Matter Definition and Brief Description
<p>Problem / Opportunity Statement – what is the client trying to do? Is there a problem the client is trying to solve? Are there other critical objectives of other stakeholders outside the client organization? [Attach Stakeholder Analysis]</p> <ol style="list-style-type: none"> 1. 2. 3. 4. 5.
<p>Key Stakeholders and Roles</p> <ol style="list-style-type: none"> 1. 2. 3. 4. 5.
<p>Objectives – what defines the desired strategy of intended future state of the matter/project in terms of the client's (and perhaps the firm's) fundamental objectives and / or purposes?</p> <ol style="list-style-type: none"> 1. 2. 3. 4. 5.
<p>Success Factors – what are the criteria for determining matter success from the client perspective? From the firm's perspective? From the matter team's perspective? How do you know when you have met the project and client objectives? Identify 2 to 3 factors that define when you have succeeded, are finished with the project, or have arrived at the "end of the matter."</p> <ol style="list-style-type: none"> 1. 2. 3. 4. 5.
Key Deliverables
<p>In-Scope and Out of Scope – outline the nature of the services to be provided to the client ("in-scope" services). Document related items or activities that are not part of this matter ("out of scope").</p> <ol style="list-style-type: none"> 1. 2. 3. 4. 5.



Key Milestones and Dates – list the key milestones and dates that the matter team must meet.

- 1.
- 2.
- 3.
- 4.
- 5.

Budget / Fee Arrangement – describe the agreed upon fee structure and billing arrangement whether fixed fee, hourly, other AFA, etc. (include bonuses and penalties)

Key Resources – list the key attorneys, other legal staff or other stakeholders that will be involved in the matter.

- 1.
- 2.
- 3.
- 4.
- 5.

Major Project Risks – list important project risks (including legal risks as well as risks that the project might not meet objectives/expectations of client or budget/fee quotes.

- 1.
- 2.
- 3.
- 4.
- 5.

Assumptions and Constraints – list facts or assumptions made that affect the team’s ability to meet the client’s expectations and any constraints or limitations on the project imposed by the client or others (i.e., outside counsel billing guidelines, specific court or other jurisdictional requirements, etc.)

- 1.
- 2.
- 3.
- 4.
- 5.



Appendix B



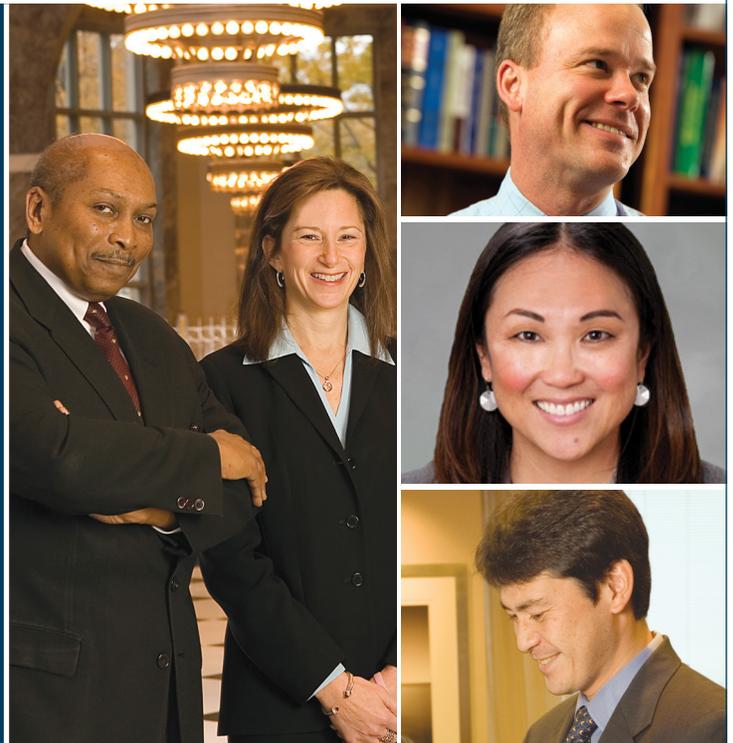
COMMITMENT TO DIVERSITY AND INCLUSION

We believe that a diverse law firm is critical to providing the quality of legal services our clients expect, preserving our core values and maintaining our rich culture. The firm takes its commitment to diversity and inclusion seriously. We have worked and will continue to work to create and maintain an open and receptive work environment and a diverse workforce of attorneys and staff. From our recruiting and advancement practices to our vendor choices, we seek change that makes a real difference inside and outside our firm.

– John Latham and Cari Dawson, Diversity Partners

SPONSORSHIP AND PARTICIPATION

- California Minority Counsel Program
- Charting Your Own Course
- Corporate Counsel Women of Color
- Georgia Association for Women Lawyers
- Hispanic National Bar Association
- Human Rights Campaign
- Lambda Legal
- Leadership Institute for Women of Color Attorneys
- Mexican American Bar Foundation
- Minority Corporate Counsel Association
- National Asian Pacific American Bar Association
- National Association of Law Students with Disabilities
- National Association of Women Lawyers
- National Bar Association
- National LGBT Bar Association
- South Asian Bar Association of North America
- Texas Minority Counsel Program



GOALS

- Ensuring representation
- Understanding differences
- Proactively managing workplace diversity and accessing top talent
- Optimizing internal and external diversity opportunities

RECRUITING

Participation in programs such as:

- Atlanta Bar Association Minority & Diversity Clerkship Program
- Bay Area Diversity Career Fair
- Black Law Students Association Regional Programs
- Fox Legal Fellowship 1L Position
- Lavender Law Career Fair
- Mecklenburg County Bar Association's Legal Diversity Clerkship Program
- HNBA Career Fair
- Southeastern Minority Job Fair
- Sunbelt Minority Recruitment Program

DIVERSITY IN ACTION

LEADERSHIP

- Atlanta Large Law Firm Diversity Alliance
- Atlanta Legal Diversity Consortium
- California Minority Counsel Program
- Charlotte-Mecklenburg General Counsel and Managing Partners' Diversity Initiative
- Leadership Council on Legal Diversity
- New York County Lawyers' Association Diversity Statement
- New York City Bar Statement of Diversity Principles
- State Bar of Georgia Diversity Program

BEST PRACTICES

- Alternative Career Path Program
- Domestic Partner Insurance
- Childcare Center & Backup Care Program
- Women's Initiative Committee
- Mentoring & Diversity Committee Liaison Programs
- Career Development Initiative
- Mandatory Diversity & Inclusion Education Classes
- Diversity Coordinator on staff
- Diversity Pipeline Initiatives
- Practice Group Diversity Development Initiative
- Diverse Attorney Directory
- Diversity Steering Committee
- Diversity Task Force
- Unconscious Bias Education Classes for all employees
- Diverse Bar Leadership Initiative

AWARDS AND RECOGNITION

- Winner of the Dell 2014 Legal Diversity Award
- Seventeen consecutive years on *Fortune's* "100 Best Companies to Work For" list
- 2015 Vault Guide to Top 100 Law Firms, ranking: #9 Overall Best Law Firms for Diversity; Quality of Life Rankings: #6 Minorities Diversity; #10 Women Diversity; #11 LGBT Diversity
- Scored 100% on the Human Rights Campaign (HRC) Corporate Equality Index for 12 consecutive years
- One of only two law firms recognized by *Fortune* as one of the country's "10 Best Companies for Women" in 2015
- Winner of the Coca-Cola Company's 2012 Living the Values Award
- Selected among *MultiCultural Law* magazine's 2012 Top 100 Law Firms for Diversity; Top 100 Law Firms for Women; Top 25 Law Firms for African-Americans; Top 50 Law Firms for Associates
- Diversity Program selected as a "Model Program" by the State Bar of California Diversity Pipeline Task Force
- Best Adoption-Friendly Workplaces List, Dave Thomas Foundation for Adoption

ABOUT ALSTON & BIRD

Alston & Bird is a leading national and international law firm. The firm's core practice areas are intellectual property, complex litigation, corporate and tax, with national industry focuses that include financial services, technology, health care, manufacturing, life sciences and energy. The firm has built a reputation as one of the country's best employers, appearing on *Fortune* magazine's "100 Best Companies to Work For" list for 17 consecutive years, an unprecedented accomplishment among law firms in the United States. The firm has offices in Atlanta, Beijing, Brussels, Charlotte, Dallas, Los Angeles, New York, Research Triangle, Silicon Valley and Washington, D.C.

