

ELIZABETH MILSARK
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Ms. Milsark specializes in survey research and quantitative analysis in litigation, including data security and privacy, false advertising, and intellectual property (IP) matters. She has served as an expert witness and has assisted clients in all phases of the litigation process. Ms. Milsark has conducted qualitative and quantitative analyses in support of academic experts and provided consulting support to attorneys in matters across a variety of industries, including technology, telecommunications, media, retail, and consumer financial products. She has experience designing, fielding, and analyzing surveys and other experimental studies using a variety of methodologies. She has provided support to experts in conducting and evaluating survey research studying consumer attention, interest, understanding, and purchase likelihood in the context of consumer products across industries. Ms. Milsark has also supported consumer behavior experts studying consumer attention to, and evaluation of information throughout, the consumer purchase journey. Her IP experience includes assessing damages resulting from copyright infringement, assessing lost profits due to patent infringement, and analyzing likelihood of confusion in trademark disputes. Ms. Milsark has managed case teams in several class action litigation matters involving violations of the Telephone Consumer Protection Act (TCPA) and assisted in evaluating violation claims, addressing class certification issues such as ascertainability and injury, and supporting experts in assessing whether dialer systems constitute automatic telephone dialing systems (ATDS).

EDUCATION

2014	M.B.A., MIT Sloan School of Management
2008	B.A., economics and psychology (<i>with honors</i>), The University of Chicago

PROFESSIONAL EXPERIENCE

2008–Present	Analysis Group, Inc. <i>Vice President (2021–Present)</i> <i>Manager (2017–2020)</i> <i>Associate (2014–2016)</i> <i>Senior Analyst (2010–2012)</i> <i>Analyst (2008–2010)</i>
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SELECTED EXPERT ENGAGEMENTS

- ***Chervon (HK) Limited and Chervon North America Inc. v. One World Technologies, Inc., Techtronic Industries Co. Ltd., and Homelite Consumer Products, Inc.***
US District Court, District of Delaware, 19-1293-LPS
Expert witness on behalf of One World Technologies in a patent infringement matter. Performed a consumer survey to assess key purchase drivers for battery-operated walk-behind lawn mowers. Submitted an expert report and testified at deposition and trial.

- **Confidential arbitration**

International Chamber of Commerce (ICC) International Court of Arbitration

Expert witness on behalf of large photocopier and printer manufacturer in a trade dress infringement matter. Performed a consumer survey to assess likelihood of forward confusion between competing office-based printing systems in US and international markets. Developed a survey and coauthored an expert report. Matter settled before testimony.

- **Riseandshine Corporation d/b/a Rise Brewing vs. PepsiCo, Inc.**

US District Court, Southern District of New York, 1:21-CV-6324

Expert witness on behalf of PepsiCo in a trademark infringement matter. Performed a consumer survey to assess the likelihood of forward confusion between Rise Brewing Co.'s ready-to-drink coffee products and PepsiCo's Mtn Dew Rise Energy energy drink product. Submitted an expert report and testified at deposition. Client won on summary judgment.

SELECTED CONSULTING EXPERIENCE

Marketing, Surveys, and Consumer Behavior

- Assessed the key factors influencing the efficacy of a celebrity endorsement and applied this framework to a celebrity endorsement of a multi-level marketing company. Supported a branding expert.
- Reviewed and analyzed the sufficiency of disclosures in advertising for “freemium”-based financial products. Supported a consumer behavior expert's presentation to Federal Trade Commission (FTC) staff and multiple state attorneys general, and assisted in the preparation of expert reports, deposition, and hearing testimony.
- Analyzed the consumer purchase process for life insurance products and the impact of the purchase process on consumer understanding of contractual terms. Supported expert reports and depositions across multiple jurisdictions.
- Analyzed the impacts of alleged diversion on brand equity of a haircare line.
- Critically reviewed the reliability of a contingent valuation survey conducted to assess the value to consumers of specific smartphone software features. Conducted qualitative interviews of consumers to demonstrate key aspects of the consumer purchase journey. Supported an expert through deposition testimony.
- Assessed whether asserted trade dress had achieved secondary meaning in the automobile industry. Supported an expert through two phases of litigation, including depositions and hearings.
- Critically reviewed the reliability of a contingent valuation survey conducted to assess the value to consumers of specific streaming TV features. Adjusted survey to demonstrate biasing impact of screening procedures. Supported an expert through deposition and trial testimony. Jury found for client.
- Supported experts in analyzing the likelihood of confusion factors in trademark cases in the nutrition and jewelry industries.

- Critically reviewed the reliability of a survey conducted to assess consumer understanding of coupon disclosures and practices. Supported counsel in deposition questioning.
- Analyzed the reliability of a survey studying the effectiveness of an advertising campaign that was conducted in the normal course of business by another party. Supported an expert through deposition testimony.
- Analyzed the consumer purchase process for homeowners and automobile insurance products, including the development of a survey studying purchase drivers of insurance products to assess the extent to which specific aspects of cancellation provisions are likely to impact consumer purchase decisions.
- Developed a survey studying consumer switching behavior in the event of a TV network blackout. Supported an expert and counsel through deposition and trial.
- Developed a survey studying the effects of additional disclosures on consumers' likelihood of purchasing an add-on policy to a cable TV package. Supported an expert through deposition and trial.
- Supported an expert in evaluating whether the opposing expert's survey met scientific standards in a health care dispute involving patient preferences.
- Reviewed and analyzed the results of qualitative marketing research to study survey participants' understanding of industry-specific terms in a music streaming rate-setting proceeding.

Data Privacy, Technology, and Telemarketing

- Analyzed call records, fax records, national and internal do-not-call lists, consent records, number porting databases, and third-party address and phone record data across numerous TCPA matters. Reviewed and assessed potential exposure, proposed class identification methodologies, proposed wireless identification methodologies, and potential injury. Supported experts through deposition testimony, class certification hearing testimony, and trial testimony.
- Conducted surveys to assess consumer understanding of disclosures related to Illinois Biometric Information Privacy Act (BIPA) claims in matters involving image recognition technology and voice recognition technology. Supported experts through deposition testimony.
- Analyzed causality and damages in a data breach matter involving protected health information (PHI) and personally identifiable information (PII). Supported two experts through deposition testimony.
- Prepared training materials summarizing technical databases and key data considerations related to a multi-year litigation to assist an attorney team in their facility with the data for a hearing.
- Supported an industry expert in assessing whether a complex software solution met contractual requirements. Supported arbitration testimony.
- Supported a cybersecurity expert in assessing the sufficiency of corporate cybersecurity policies in detecting and resolving security threats.
- Supported a technology expert in assessing whether text messaging platforms constituted ATDS under the TCPA. Supported deposition testimony.
- Analyzed telemarketing records and customer address data in a TCPA and Telemarketing Sales Rule (TSR) litigation matter. Supported counsel in data production, deposition of opposing experts, and direct and cross examination guidance for two trials.

Antitrust and Competition, IP, and Damages

- Analyzed claimed efficiencies for the proposed Kroger-Albertsons merger. Supported an expert for the FTC through deposition and trial testimony. Judge ruled in favor of the FTC and blocked the proposed merger.
- Analyzed documentary evidence of an alleged collusive agreement to award financial aid among top universities. Supported an education expert in describing the higher education industry.
- Analyzed damages in a false labeling case related to Kona coffee. Supported an expert through deposition testimony and successful class certification.
- Supported an industry expert in developing two reports regarding key trends in the media industry, including the benefits of scale and scope from M&A, in a shareholder litigation.
- Supported a US Food and Drug Administration (FDA) expert in describing FDA policies and procedures regarding tentative approvals for generic manufacturers in the context of a generic antitrust litigation.
- Assessed lost profits due to patent infringement of a medical device. Supported an expert through deposition testimony.
- Calculated damages in a copyright infringement case related to LovePop greeting cards. Supported an expert through deposition and trial testimony. The jury found for our client on all claims, awarding statutory damages and disgorgement of profits.
- Analyzed the competitive effects of restrictions in hospitals' marketing activities.
- Analyzed health care competition in Massachusetts for numerous matters, such as analyzing a proposed hospital merger, assessing patient diversion following potential hospital closures, and evaluating provider price variation.
- Supported an expert in analyzing pass-through related to allegations of price-fixing with respect to liquid-crystal display (LCD) panels.
- Supported an expert comparing the pricing of regional providers of industrial chemicals to assess the competitive effects of a joint venture. Presented findings to FTC staff.

ARTICLES & PUBLICATIONS

“Parody and Tarnishment: How Empirical Methods Can Aid Triers of Fact,” with Rene Befurt, Marie Warchol, and Josh Ng, *IPWatchdog* (May 19, 2023)

PRESENTATIONS AND SPEAKING ENGAGEMENTS

“FCC’s Blocking of Unwanted Robocalls: Exploring Implications to the Year Ahead,” webinar, The Knowledge Group (October 2019)

“Economic, Statistical, and Experimental Methods,” guest lecture, UCLA School of Law *Food Litigation: Consumer Protection, Regulation, and Class Actions* seminar (October 2022, November 2023)

PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS

American Marketing Association (AMA)

American Bar Association (ABA) Antitrust Section