

Doing Well By “Doing Good” – A Look At Brands and Corporate and Social Responsibility

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BRAND PROTECTION – IP and CSR

“It takes 20 years to build a reputation and five minutes to ruin it. If you think about that you will do things differently.” Warren Buffett

Customers buy products they **value** and **trust** =
BRAND EQUITY

CSR programs:

- **manage risk** – product safety, supply chain compliance, ethics
- **build goodwill** – contribute to charitable efforts, promote equality, do the right thing, better the world...

CSR: Corporate Social Responsibility

“...A commitment to improve community well-being through discretionary business practices and contributions of corporate resources.”¹

1. Philip Kotler & Nancy Lee, *Corporate Social Responsibility: Doing the Most Good for Your Company and Your Cause* (December 2005).

Rana Plaza – Bangladesh



Lumber Liquidators

CBS/AP February 10, 2016, 8:26 PM

Feds: Harmful formaldehyde levels in Lumber Liquidators flooring

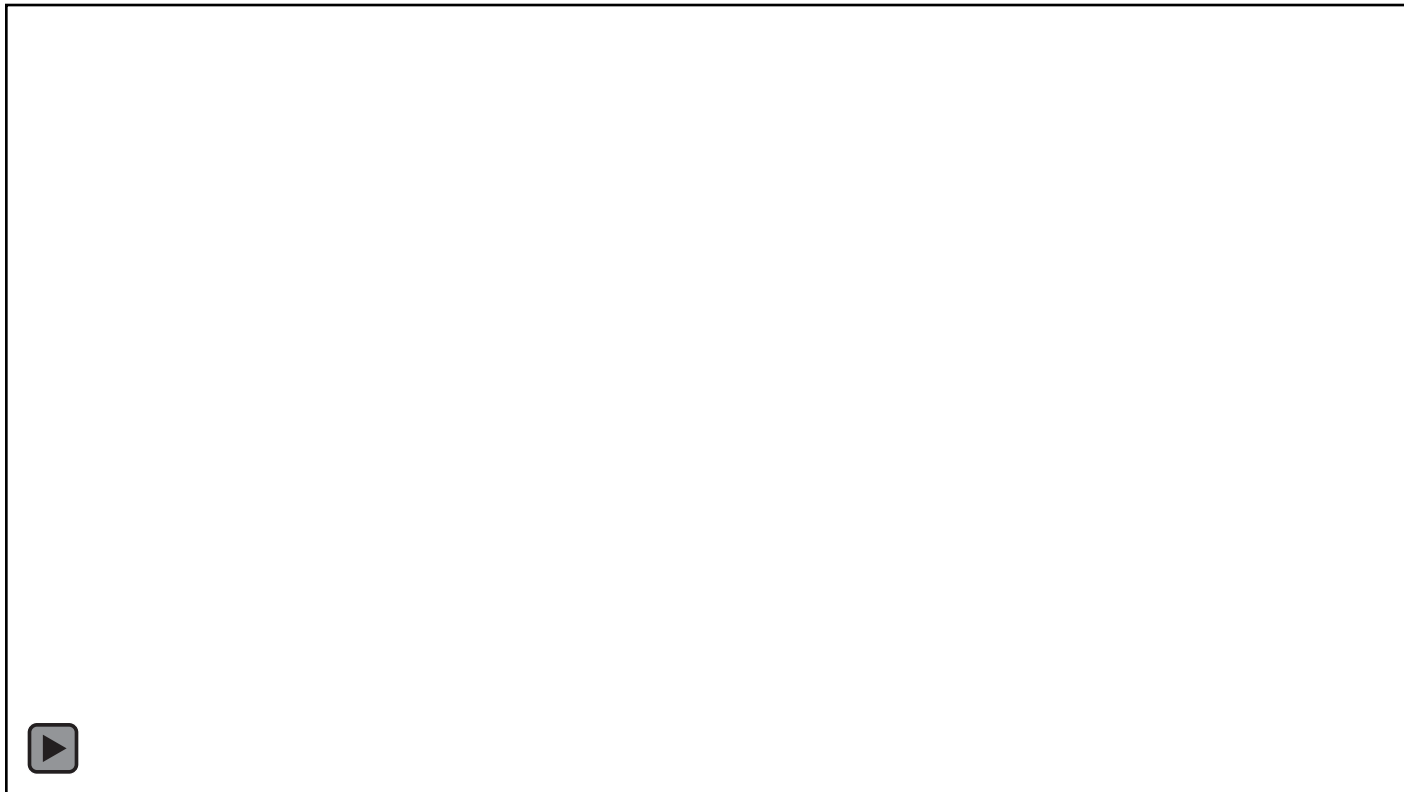


A sign marks the location of a Lumber Liquidators store on April 29, 2015 in Cicero, Illinois. / SCOTT OLSON, GETTY IMAGES

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NEW YORK -- A national retailer sold Chinese-made flooring that emits hazardous levels of formaldehyde, a carcinogen, a federal investigation found.

Verizon Super Bowl Ad: Thanking First Responders



On the Agenda

- Overview of selected CSR laws and regulations
- Supply chain issues
- Charitable affiliations
- Rise of the B Corp
- Trademarks and goodwill
- Licensing and co-branding considerations
- Examples of CSR in practice

CA Prop 65 – Lead in lipstick

SAFE GUARDS

SGS CONSUMER TESTING SERVICES

HARDLINES NO. 056/08 AUGUST 2008

California Proposition 65 Settlements : Californian Judge gives lead the “Kiss-off”

The release of a report in 2007 titled “A Poison Kiss: The Problem of Lead in Lipstick” by the Campaign for Safe Cosmetics (CSC) as well as court cases regarding the presence of lead in lipstick have raised public concern about whether the presence of lead in lipstick violates Proposition 65.

The Attorney General, State of California, Department of Justice, concluded that the level of Lead in lipstick, up to 5 parts per million (ppm), does not raise a reasonable claim of a Proposition 65 violation and ought not to be pursued.

The exposure data is based on the assumption of the use of lipstick of 100 milligrams per day. Comparing this to the 0.5 microgram per day “safe-harbor” Maximum Allowable Dose Level (MADL) from Proposition 65, it appears that a reasonable claim that there is a duty to warn would not arise until concentrations exceed 5 ppm Lead.

The Attorney General added that Lead is not readily absorbed through skin by application of lipstick.

As the leader in one-stop total quality services, SGS is equipped with state-of-the-art facilities and an expert team. With these strong technological backgrounds we offer a high-level of expertise in testing, verification, technical consultancy and inspection of products for the cosmetics industry. Through extensive experience that we have acquired over the years, SGS simply can help.

Please do not hesitate to contact us for any further information.



<http://www.sgs.com/prop65/poll>
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Lead in toys

Mattel shifts into crisis mode after quality problems

By LOUISE STORY AUG. 28, 2007

EL SEGUNDO, California — The wake-up call for Mattel came just as it was preparing to announce that the company would recall 1.5 million Chinese-made toys that were tainted with lead paint.

Surrounded by boxes of Barbie dolls, Hot Wheels cars and other sample toys, Tom DeBrowski, Mattel's executive vice president for worldwide

\$2.3M fine

\$50M class action settlement

Other products

United States
CONSUMER PRODUCT SAFETY COMMISSION

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Polaris Agrees to Pay \$27.25 Million Civil Penalty for Failure to Report Defective Recreational Off-Road Vehicles

Release date: April 2, 2010 Release number: 10-134

Release Details

1 of 2 photos



Laws and Regulations Relevant to CSR

CA Prop 65: “Clear and reasonable” warning prior to exposing individuals in California to chemicals known to cause cancer or reproductive toxicity.

New warning regulations effective August 30, 2018:

- Revised safe harbor warning language
- Transmission of warnings (e.g., online purchases)
- Clarification on allocation of responsibility between manufacturer and retailer

CA Prop 65 Safe Harbor Warning



WARNING: This product can expose you to chemicals including [name of one or more listed chemicals], which is known to the State of California to cause cancer, and [name of one or more listed chemicals], which is known to the State of California to cause birth defects or other reproductive harm. For more information, go to www.P65Warnings.ca.gov



WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

Laws and Regulations Relevant to CSR – CA Prop 65

- Civil penalty of up to \$2,500 per day per violation
 - 25% of civil penalty goes to plaintiff
 - Various factors considered when assessing penalties (e.g., good faith measures to comply)
- Attorneys' fees
 - In 2017, businesses paid a total of \$25,767,500 in settlement to plaintiffs. Of that total, 76% was paid in attorneys' fees and costs to plaintiffs.²

2. <https://oag.ca.gov/prop65/annual-settlement-reports>

Laws and Regulations Relevant to CSR (cont'd)

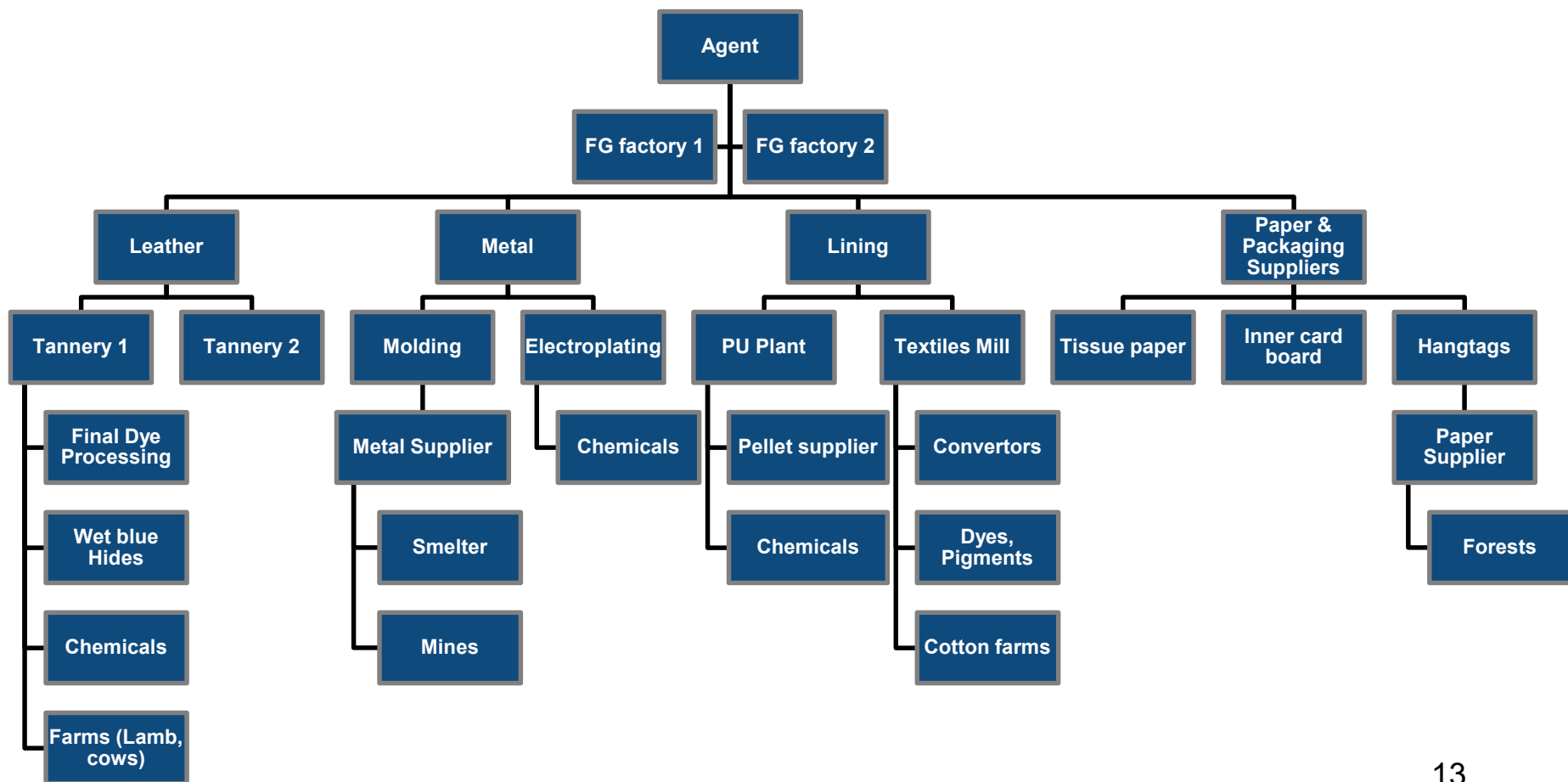
– Modern Slavery Acts

- California Transparency in Supply Chains Act of 2010
 - Class action lawsuits filed based on false and misleading statements made in connection with Act.
- UK Modern Slavery Act 2015
- Other countries (e.g., Australia, France)
- New York Anti-trafficking Act

SUPPLY CHAIN LEGAL RISK ANALYSIS – CSR Regulations Overview

- EU timber regulations
- EU and US conflict minerals
- Human trafficking and slavery regulations
- Uzbek cotton
- Restricted Substances in products/Identification of Prop 65 listed chemicals
- Manufacturing RSLs (mRSL)
- Environmental violations
- Labor and pay issues
- Animal welfare policies
- N. Korean declarations

Mapping the Handbag Supplier



SUPPLY CHAIN LEGAL RISK ANALYSIS – Example

Countering America's Adversaries Through Sanctions Act of 2017⁵

- CBP's CF-28s request detailed information from companies:
 - Do you as an importer have a due diligence program that includes examining whether supply chains are free from forced child, convict or forced labor?

5. Countering America's Adversaries Through Sanctions Act (H.R. 3364, Pub.L. 115–44)

SUPPLY CHAIN LEGAL RISK ANALYSIS

– Example (cont'd.)

- What supply chain audits have been done to ensure that you as the importer have an ethical (socially responsible) supply chain free of forced child labor and forced labor in order to ensure compliance with 19 U.S.C. § 1307?
- How do you as an importer identify whether or not your supply chains include goods made wholly or in part by North Korean laborers, wherever located?

SUPPLY CHAIN LEGAL RISK ANALYSIS

– Example (cont'd.)

- Have you as an importer conducted internal audits, and/or hired a third party to conduct an audit, to ensure there is no forced labor or forced child labor in your supply chain? If yes, what were the dates of the audits, who conducted the audits, and what were the findings?
- Please furnish to CBP copies of all forced labor and forced child labor supply chain audits, including findings and recommendations.

BRAND PROTECTION – IP and CSR

- **BRAND EQUITY** – what can you do to protect it?
 - BUILD a compliance program
 - KNOW your supply chain and assess potential risks
 - WHO makes your products?
 - » Direct, agents, licensees
 - INCLUDE contractual terms for vendors, licensees, suppliers (ideas for language – not legal advice)

BRAND PROTECTION – IP and CSR (cont'd.)

Supplier will provide Purchaser with all information required in order to fulfill Purchaser's duties to communicate and/or notify regarding substances of very high concern (SVHC) as included pursuant to REACH and [Supplier warrants the] products do not contain any substances banned by Proposition 65.

Supplier certifies that it and its subcontractors and suppliers, with respect to the goods and the materials incorporated into the goods, comply with the laws regarding slavery and human trafficking in the country or countries in which they conduct business.

BRAND PROTECTION – IP, CSR, and Marketing

- **BRAND EQUITY** – what can you do to protect it?

Suppliers for the Company shall not make any environmental claims or use any social or environmental certifications, symbols or logos on products unless the claim is accurate and the supplier has original documentation available to validate the claim, statement, symbol or use of logo. Suppliers shall not use or make any such claims unless the claim, statement, symbol, or logo has been approved in advance and in writing by the Company's legal department.

BRAND PROTECTION – IP, CSR, and Marketing

- Charitable affiliations
- “Messages” and **MIS**-perceptions
 - Eco-friendly
 - made with clean energy
- FTC Greenwashing⁶
- Sustainability reports – What’s the spectrum?
 - Organic cotton, Better Cotton (BCI)
- Made in the USA (country of origin)

6. <https://www.ftc.gov/news-events/press-releases/2012/10/ftc-issues-revised-green-guides>

BRAND PROTECTION – IP, CSR, and Marketing

Made in the USA (country of origin)

- **Federal**
 - must meet the “***all or virtually all***” standard
- **State of California**
 - Article/parts from outside the US **are not more than 5% of the final wholesale value**⁷
 - Article/parts from outside the US (that can not be obtained in US) **are not more than 10% of the final wholesale value**⁸

7. <https://www.ftc.gov/system/files/documents/plain-language/bus03-complying-made-usa-standard.pdf>

8. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB633

Sustainable Clothing & E x

www.levi.com/US/en_US/features/sustainability

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StyleBot

12:33 PM 1/3/2018

Rise of the B Corp

- B Corps meet the highest standards of verified social and environmental performance, public transparency, and legal accountability, and aspire to use the power of markets to solve social and environmental problems.
 - <https://www.bcorporation.net/>
- Best ~~in~~ **FOR** the world

Goodwill & Value

- Consumers say brand, not price, is most important buying factor
- Brand Embodies Purpose:

Corporate Social Responsibility

Goodwill, Value & CSR

- Survey asked people which brands out of 200 well known organizations inspired them the most.

https://www.fastcompany.com/40576142/which-brands-inspire-consumers-the-most-with-their-missions?utm_source=postup&utm_medium=email&utm_campaign=Fast%20Company%20Daily&position=1&partner=newsletter&campaign_date=05232018

- 2018 World ValueSM Index - Top Brands (<http://enso.co/worldvalue>)

1. St. Jude Children's Research Hospital	10. Girl Scouts of the USA	21. FedEx	31. Nestle	41. LEGO
2. Red Cross	11. World Wildlife Fund	22. Microsoft	32. AAA	42. Fisher-Price
3. Salvation Army	12. Google	23. UPS	33. Kraft	43. Lowe's
4. Goodwill	13. National Geographic	24. Wikipedia	34. CVS Pharmacy	44. McDonald's
5. Habitat for Humanity	14. YMCA	25. Samsung	35. Lipton	45. LAY'S
6. Doctors Without Borders	15. Johnson & Johnson	26. PayPal	36. Home Depot	46. Target
7. Amazon	16. Olympics	27. United Way	37. Walmart	47. NIKE
8. Boys and Girls Club	17. Campbell's Soup	28. Kellogg's	38. Subway	48. Whole Foods
9. Save the Children	18. Dove	29. Bill & Melinda Gates Foundation	39. Coca-Cola	49. Visa
	19. Netflix	30. YouTube	40. Newman's Own	50. AARP
	20. Disney			

The Facts About Branding and CSR

- A 2014 study titled The Nielsen Global Survey of Corporate Social Responsibility examined more than 30,000 consumers in 60 countries worldwide to better understand the impact of CSR on behavior. Of the over 30,000 global consumers surveyed:
 - 67% prefer to work for socially responsible companies
 - 55% will pay extra for products and services from companies committed to positive social and environmental impact

The Facts About Branding and CSR (cont'd.)

- 52% made at least one purchase in the past six months from one or more socially responsible companies
- 52% check product packaging to ensure sustainable impact
- 49% volunteer and/or donate to organizations engaged in social and environmental programs

Things for Brands Conducting CSR to Consider

- Trademarks – who owns what – register – monitor
- Consider Royalty – do you want one – need one?
- Consider Scope – narrow market – do not want to harm other channels – maybe license locally
- Quality Control – crucial to brand image – crucial to those receiving products/services
- Compliance – Local Laws – Industry Regulations – Supply Chain – Labor – Materials
- Audit/Inspection
- Ability to terminate/transfer
- Indemnity?

Important Factors in Co-Branding

- CO-BRANDING: Agreement to market a good or service under more than one trademark
- Use of the mark
 - What exactly is the mark that will be used?
 - How will it be used?
 - Who may use it?
 - Where may it be used?
 - Who will monitor the use?
 - Who will own?
 - Who will enforce?

Strategic Partner Selection

- Choosing the Right Partner
 - Local market presence or reputation
 - Stable and effective distribution network
 - Safe and efficient manufacturing capacity
- Working with a Licensing Agency
 - Strong reputation
 - Strong connection to licensing community
 - Quality of agency's relationships

BRANDS AND CSR WORKING TO DO GOOD

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Project Literacy: Rewriting lives

By Nicole Kyriacou March 22, 2018 1 952



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At Pearson, we believe in the power of difference. Harnessing the unique skills, perspectives, and backgrounds of every employee helps us foster innovation and create the most effective solutions for learners around the world.

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Superfluous SWEDOW



MORAL: assess and adapt



PATAGONIA: CSR in Practice

- Maintains that its environmental preservation efforts give it standing to sue re: National Parks matters
- CEO emphasized that Patagonia is a benefit corporation and its articles of incorporation mandate that it confronts environmental threats.
 - Corporate Social Responsibility:
<http://www.patagonia.com/corporate-responsibility.html>
 - Company as Activist:
<http://www.patagonia.com/the-activist-company.html>

Microsoft Super Bowl Ad: We All Win





Alisa Key
Senior Counsel, IP
Pearson Education

Ms. Key is a member of the Global Intellectual Property Team at Pearson Education and specializes in the areas of trademarks, copyrights and domain names. She spent the early part of her legal career in private practice focusing on trademarks, unfair competition, counterfeit goods, copyrights and domain names. She has represented clients in a wide range of industries in acquiring, managing and licensing their intellectual property rights as well as enforcing and defending those rights in litigation and alternative dispute resolution proceedings. Prior to joining Pearson, she was in-house counsel with Rosetta Stone. She has been a part of the leadership of the ACC Intellectual Property Network for many years and currently serves as Chair of the Network.



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Bar Admissions

Connecticut (1992)
New York (1993)
Colorado (2005)

Court Admissions

U.S. Court of Appeals for the Federal Circuit (1995)
U.S. Court of Appeals for the Second Circuit (2000)
U.S. District Court for the Eastern District of New York (1992)
U.S. District Court for the Southern District of New York (1992)
U.S. Supreme Court (2005)

Marc is the co-chair of the Retail & Consumer Goods industry team. His practice focuses on intellectual property licensing and franchising in the retail/consumer goods and services areas, fashion/apparel and accessories, food and beverage, and commercial/industrial design, including the drafting, negotiation and enforcement of license and franchise documents and agreements, as well as implementation of branding and commercialization objectives for clients via licensing and franchising. In conjunction with the services above, he counsels clients on creating effective strategies for procuring, protecting and enforcing their global intellectual property assets. Marc has also participated in and used alternative dispute resolution forums such as arbitration and mediation to enforce intellectual property rights. Marc frequently lectures and writes on intellectual property issues for a variety of intellectual property organizations and publications, including International Trademark Association (INTA), New York State Bar Association (NYSBA) Intellectual Property Section, American Bar Association Forum on Franchising, Wharton Business Law Association at the University of Pennsylvania, New York University, Association of the Bar of the City of New York Fashion Law Committee, Licensing Industry Merchandisers' Association (LIMA), *National Law Journal*, *IP Strategist* and *The New York Law Journal*, *Practical Law*, *The Licensing Journal*.

Marc is listed in the 2019 and the eight years immediately preceding editions of *World Trademark Review 1000 – The World's Leading Trademark Professionals*. He was recognized as a New York "Super Lawyer" in Intellectual Property by *Super Lawyers* magazine in 2018 and the eight years immediately preceding, and, for the last seven years, he was named a Top 100 New York Metro "Super Lawyer" in Intellectual Property. Marc has been recognized as an "IP Star" in 2018 and the five years immediately preceding by *Managing Intellectual Property* magazine. In 2017, he was recognized by *Who's Who Legal* for Franchising. Marc was named a 2018 Legal Eagle by *Franchise Times*. He was also recommended by Legal 500 US in 2015, 2016, 2017 and 2018 for Copyright. In 2013, Marc received the Lexology *Client Choice Guide - International 2013 Award* and is the sole winner in the Intellectual Property: Copyright category for New York. He was also listed in the 2012 and the four years immediately preceding editions of *Chambers USA: America's Leading Lawyers for Business* for Intellectual Property: Trademark & Copyright. Chambers noted that Marc has "tremendous business savvy and is tenacious in his work ethic," according to his clients (2012).

Representative clients/brands include: MOMOFUKU, FIG & OLIVE, S'WELL BOTTLE, JOE FRESH, TAILORED BRANDS, PATTY MADDEN, BILLY REID, ENERGIZER, STETSON, Georgia-Pacific, Osram Sylvania and UPS.



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Court Admissions

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U.S. District Court for the Central District of California

U.S. District Court for the Eastern District of California

U.S. District Court for the Southern District of California

U.S. Court of Appeals for the Ninth Circuit

Holly Gaudreau focuses her practice on commercial litigation, including antitrust, unfair competition, trademark, and copyright. She also advises clients on compliance and litigation matters involving California's Safe Drinking Water and Toxic Enforcement Act (Proposition 65). Holly was recognized as a Northern California "Super Lawyer" in 2017 and 2018 for Intellectual Property Litigation by *Super Lawyers* magazine

Thank You