KILPATRICK TOWNSEND

7 KEY TAKEAWAYS

Doing Well by "Doing Good"

A Look at Brands and Corporate and Social Responsibility

On March 20, 2019, Kilpatrick Townsend was honored to present and host the ACC Intellectual Property Network webcast entitled: Doing Well by "Doing Good" - A Look at Brands and Corporate and Social Responsibility. Marc Lieberstein, our New York brand licensing and franchising partner and co-chair of our Retail and Consumer Goods Industry Team, and Holly Gaudreau, our San Francisco based counsel for commercial litigation and regulatory compliance matters, spoke with Alisa Key, Senior Counsel – Trademarks and Copyright for Pearson Education. Alisa is the current Chair of the ACC Intellectual Property Network.

Key takeaways include:

1

There are a wide range of state, federal and international laws and regulations that impact a brand's CSR practices. These include consumer "right to know" statutes, modern slavery laws governing supply chains and manufacturing, as well as labor practice, consumer safety and environmental regulations. The consequences of non-compliance are steep: civil and criminal penalties, litigation and negative PR resulting in damage to brand reputation.

2

One example of a state "right to know" statute is California's Safe Water and Toxic Enforcement Act ("Prop 65"). This law requires that businesses provide "clear and reasonable" warnings for products that expose people in California to chemicals known to cause cancer or reproductive toxicity.

3

Large retailers and manufacturers doing business in California must also comply with the California Transparency and Supply Act of 2010 by disclosing on their websites efforts to eradicate slavery and human trafficking from their direct supply chains for goods offered for sale. Injunctive relief by the California Attorney General is the exclusive remedy for non-compliance. Although there is no private cause of action under the Act, alleged inadequate or misleading disclosures made pursuant to the Act have triggered class action lawsuits based on consumer protection laws such as deceptive advertising.

4

Know your suppliers! It is imperative that you thoroughly vet your supply chain to ensure compliance with the various laws, especially if you are sourcing material outside the U.S. Pay particular attention to China as suppliers/contractors. They may be using substances that are either banned for use on products (e.g., lead in toys) or require warnings under Prop 65. China (and Russia) are also risky as they border North Korea and may be using North Korea labor in violation of the Countering America's Adversaries Through Sanctions Act of 2017. In January 2019, a company was fined for importing false eye lash kits from suppliers in China, which contained materials sourced from suppliers in North Korea. Every entity up and down the supply chain matters.

supply chain matters.

5

Worldwide brands are implementing CSR programs not only to comply with tougher laws, but also to satisfy consumer demand for brands that give back to the community or that are taking steps to be environmentally friendly. Survey evidence shows that over 50% of consumers will pay extra for a brand that is participating in CSR. And almost 70% of prospective employees (talent) want to work with companies that are actively engaged in CSR.

The relationship agreements (licenses, distribution, supplier, joint ventures, co-branding) among brands and their CSR partners must provide for brand protection, as well as ensure that all partners up and down the supply chain -- from manufacturers (including sub-manufacturers) to retailers -- are all complying with applicable laws and regulations.

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Cooperation and communication between brand counsel and compliance counsel with the business and marketing executives is imperative for any CSR program to succeed.

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