

MVP: Sheppard Mullin's Craig Cardon

Law360, New York (December 14, 2017, 6:13 PM EST) -- Sheppard Mullin Richter & Hampton LLP's Craig Cardon nabbed big victories for major retailers like Nordstrom and Columbia Sportswear in recent months, landing among Law360's Retail MVPs for the third year running by securing game-changing decisions in pricing and false-advertising class actions while helping his clients navigate looming regulatory concerns.

HIS BIGGEST ACCOMPLISHMENT:

Litigation challenging pricing practices was at the forefront of the retail and e-commerce industry this year, and Cardon saw his work in this hot area of the law come full circle at the beginning of December.

Consumer Thomas Belcastro had accused Burberry Ltd. of an outlet-pricing scheme, saying the luxury retailer marked goods at a high "compare at" or "was" price to make them seem like a deal, even though they were manufactured specifically for sale in outlets and had never been sold at those prices.

But U.S. District Judge Valerie Caproni tossed the proposed class action on Dec. 1, holding that the consumer hadn't alleged actual injury, other than merely feeling disappointed. In reaching her decision, the judge relied largely upon three cases bringing similar claims against Nordstrom Inc., The TJX Cos. Inc. and Kate Spade & Co. — all of which Cardon had worked on earlier in the year.

"You don't get that often — to be able to see how you've helped shape the law as it's progressed through the course of a relatively short period of time and get to see the results of that," he said.

HIS BIGGEST CHALLENGE THIS YEAR:

This year, Cardon tirelessly defended retailers across the country in a slew of suits at the trial and appellate levels, but the hardest thing he dealt with originated from across the pond: General Data

The logo consists of the letters 'MVP' in a blue, serif font. The letter 'V' is enclosed within a red circle that has a small red arrow pointing upwards and to the right, suggesting a 'V' with an upward trend or a 'V' that is a 'winner'.

Craig Cardon
Sheppard Mullin

Protection Regulation compliance.

Slated to take effect in May, the sweeping regulation will replace the European Union's current data protection directive, tightening restrictions on the use and flow of data while empowering privacy regulators to levy substantial fines.

The problem is that "a lot of the nuts and bolts in terms of how compliance can be affected, what different things mean, haven't been worked out yet by the regulators," Cardon said.

This makes prepping for the regulation particularly challenging for U.S. retailers because the GDPR doesn't address a lot of concepts that are oftentimes new to them, like the right to be forgotten, he noted.

"I think that's been the biggest challenge — the relatively short period of time, no one is sure what enforcement is going to ultimately look like and not a tremendous amount of clarity in terms of what compliance in this industry should look like because it hasn't gone into effect yet, therefore nobody knows," he said.

As a result, there's no one-size-fits-all approach, Cardon said. Rather, his plan of attack involves carefully looking at clients' business and helping them come up with the "most bang for your buck" strategy, prioritizing the things they know regulators will want to see and waiting on aspects that seem like less of a focus and where the interpretation remains hazy.

OTHER NOTABLE MATTERS:

A big win for Cardon came in July, when the First Circuit affirmed the dismissal of a false-advertising class action accusing Nordstrom Inc. of tricking consumers into believing they were purchasing heavily discounted goods at its Nordstrom Rack stores when the products were exclusively manufactured for the outlet stores.

Consumer Judith Shaulis alleged that the price tags misled shoppers about the quality of items, but the panel found that her asserted injuries weren't sufficient, pointing to the district court's conclusion that she "arguably got exactly what she paid for." After all, the panel noted, the consumer didn't say there was anything wrong with the cardigan she purchased, just that she felt like she got a bad deal.

The ruling came on the heels of another important victory in a similar suit accusing Columbia Sportswear Co. of deceptive outlet pricing. In that matter, U.S. District Judge Yvonne Gonzalez Rogers handed down a key ruling in May, when she declined to certify a damages class after finding that the consumers hadn't offered a viable classwide method for calculating monetary relief.

That decision went to the core of what the damages are in these types of false-advertising suits and has been widely cited by other courts since, according to Sheppard Mullin.

"I think these cases recognize that actual harm is an issue," Cardon said, adding that while he expects

these sorts of false-advertising suits will continue to crop up, he hopes that some of the favorable decisions retailers secured this year will help reimpose a little more rigor on the other side of the aisle.

"My hope is that what you're going to see are cases where more time has been spent figuring out, 'Has someone really been adversely affected?'" he said, "rather than: 'I think somebody said something that may not be accurate. Let me file a lawsuit and figure out how I was harmed after the fact.'"

WHAT MOTIVATES HIM:

Nowadays, people are quick to say that retail is dying, but Cardon firmly disagrees.

"There's so much opportunity in it now," he said. "I don't think we're at the death of retail at all. I think we're at the reformation of retail, where it's changing so dramatically and becoming so much more relentlessly customer-focused."

Cardon loves to watch his clients grow and develop, a benefit of what he calls his "soup to nuts" retail and e-commerce practice. The attorney is there when businesses are being launched and helps them navigate all the issues along the way, from financing to regulatory concerns to litigation.

A perfect example is his work with 11 Honoré, a fashion startup aimed at filling the gap in the industry for shoppers looking for designer clothing in sizes 10 to 20. The company's platform is taking off, and Cardon's team has been there every step of the way, helping refine the business model, raise the first round of venture capital financing and everything in between, he said.

"I get to see how these acorns start to grow and become oaks, and then I end up defending them when they're a big target because they're a big mighty oak and somebody is suing them over something," he said. "I understand not just the genesis of the business, but the ins and outs and the philosophy of the business and how the business operates."

— *As told to Shayna Posses*

Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2017 MVP winners after reviewing more than 1,000 submissions.

All Content © 2003-2017, Portfolio Media, Inc.