



FASHION, RETAIL, LUXURY AND CONSUMER GOODS

DuaneMorris®

THE DUANE MORRIS REPORT 2015

As fashion, retail and consumer goods clients predict and set trends, **DUANE MORRIS** attorneys are alongside to prepare for, anticipate and respond to implications and business opportunities. The issues facing the industry require counsel who have the experience, finesse and sophistication to understand the implications of the marketplace encountered by specialty goods companies.

Over the past several years, our attorneys have worked closely with retailers, high-end fashion brands and other luxury and consumer goods to ensure brands, entities and products are developed, launched, protected and maintained without a hitch. Clients benefit from Duane Morris' global network of resources, which has facilitated and supported all types of transactions. With extensive experience representing such clients in a number of matters, we are delighted to share the highlights of our 2015 work in this report.

REPRESENTATIVE CLIENTS

- ▶ ANKI
- ▶ ANTHROPOLOGIE, INC.
- ▶ AUTOMOBOLOX
- ▶ B. SIDE SWIMWEAR
- ▶ BELLE&BEANZER
- ▶ BOB MACKIE DESIGN GROUP, LTD.
- ▶ BON-TON DEPARTMENT STORES
- ▶ BRERA OROLOGI
- ▶ COTT CORP.
- ▶ COTY, INC.
- ▶ DAVID BROMSTAD
- ▶ ELEGANT MOMENTS
- ▶ HELEN JON
- ▶ INGLOT
- ▶ KID O TOYS
- ▶ LABELUX GROUP
- ▶ LACE SILHOUETTES
- ▶ LAND ROVER
- ▶ LENOX
- ▶ MARIACHI IMPORTS
- ▶ McCUBBIN HOSIERY, LLC
- ▶ NAKED BRAND GROUP INC.
- ▶ NANETTE LEPORE
- ▶ PARFUM FRANCIS KURKDJIAN
- ▶ PHAROS GROUP INDONESIA
- ▶ POLDER
- ▶ PRIVÉ SALON
- ▶ SLEEPY'S
- ▶ SOLANGE AZAGURY-PARTRIDGE
- ▶ SWAROVSKI
- ▶ TIFFANY & CO.
- ▶ UNILEVER
- ▶ URBAN OUTFITTERS
- ▶ WINEACCESS INC.
- ▶ WOLFGANG JOOP
- ▶ YOUR STYLE UNZIPPED
- ▶ ZAGLIANI

SERVICES PROVIDED

- ▶ ACQUISITIONS
- ▶ CYBERSECURITY
- ▶ DISTRIBUTION AND LICENSING AGREEMENTS
- ▶ FINANCING
- ▶ INTELLECTUAL PROPERTY
- ▶ LABOR AND EMPLOYMENT
- ▶ LITIGATION
- ▶ PRIVACY AND DATA PROTECTION
- ▶ PRODUCTS LIABILITY
- ▶ REAL ESTATE
- ▶ TRADE SECRET
- ▶ TRADEMARK PORTFOLIO MANAGEMENT
- ▶ VENTURE CAPITAL



REPRESENTATIVE MATTERS

Corporate

- ▶ Represented Naked Brand Group Inc. (NASDAQ: NAKD), a leading designer and manufacturer of men's and women's innerwear, in the filing of its Form S-1 registration statement, pricing and closing of its underwritten public offering for 1,875,000 shares of common stock with a simultaneous uplist to NASDAQ. Duane Morris also represents Naked as their outside counsel on securities and other business matters, including a previous tender offer and endorsement agreement with Dwyane Wade of the Miami Heat.
- ▶ Representing Pharos Group Indonesia, a leading pharmaceutical company, in establishing a manufacturing entity engaging in pharmaceutical, cosmetics and functional food production in Vietnam.
- ▶ Represented Cott Corp., a leading supplier of private label drinks, in the acquisition of Cliffstar Corp. in a US\$500 million cash deal that made Cott one of the world's largest retailer brand beverage companies.
- ▶ Advising on agreements relating to distribution and franchising for UK and international manufacturers and distributors in the automotive industry, pharmaceuticals/ medical products, fashion and beauty sectors, including EU Block Exemption issues.
- ▶ Represented a global fragrance business in a strategic equity investment and extension of credit.
- ▶ Acted as special international counsel to Indian Terrain Fashions Limited on the sale of Rs. 750 million (US\$12 million) of its shares in a QIP (including concurrent private placements outside India and the U.S.).
- ▶ Represented WineAccess, Inc., a direct-to-consumer (DTC) wine ecommerce company, in its acquisition by Norwest Venture Partners, a global, multi-stage venture capital and growth equity investment firm.
- ▶ Represented an international food products distribution and marketing company in the drafting and negotiation of (i) a private label agreement with a European-based supermarket, (ii) a distribution agreement with a wholesale grocery distributor and (iii) a standard vendor agreement for foreign suppliers.
- ▶ Represent a foreign textile manufacturer in connection with negotiation of a sourcing agreement with a major U.S.-based retailer.
- ▶ Advised a Singapore company in the business of online retailing of luxury fashion goods in connection with its strategic alliance marketing and promotion agreement with Visa Worldwide.
- ▶ Advised an international company in the business of designing and manufacturing luxury leather goods in connection with its rights issue exercise, issue of warrants and bridge loan facility, as well as various employment matters.

- ▶ Represented a bank in connection with a \$13 million asset-based revolving loan and a \$4 million term loan to a manufacturer of custom retail fixtures and equipment.
- ▶ Represented Community Loan Fund of New Jersey, Inc. in connection with the deployment of federal New Markets Tax Credit allocation for the \$174 million restoration of the Hahne's Department Store building in Newark, New Jersey, into 160 mixed-income housing units, 75,000 square feet of street-level retail space and a new arts and cultural center for Rutgers University. The retail portion includes a 30,000-square-foot Whole Foods.

Litigation

- ▶ Represented a national retailer (850-plus stores in 26 states) in various commercial litigation matters, including trade secret and unfair competition litigation, SEC litigation and a wage-and-hour class action.
- ▶ Defending several companies in connection with California Proposition 65 litigation, which requires producers of consumer goods to label products that contain toxic substances or risk facing penalties and sanctions.
- ▶ Representing a national designer and manufacturer of fragrances and its president in connection with a shareholder's dispute on claims for breach of fiduciary obligations, including mismanagement of the company, excessive compensation and improper hiring practices.
- ▶ Represented a publicly traded fashion/apparel company in connection with FINRA insider trading inquiry.
- ▶ Successfully obtained summary judgment in the Delaware Superior Court for a national drugstore chain in the defense of a claim under Delaware whistleblower law.
- ▶ Representing a golf equipment and clothing company in a civil case pending in Massachusetts state court concerning a dispute over the tax provisions of the agreement by which the company was sold to a group of buyers.
- ▶ Representing various retailers in putative class action claims brought against them for alleged failure to comply with the ADA for access to point of sale devices.
- ▶ Counseled a global luxury car brand on commercial contracts in Russia and antimonopoly (antitrust) issues.
- ▶ Represented a privately held company that owns one of the fastest-growing and most innovative luxury brands in the home furnishings marketplace (positioned as a lifestyle brand and design authority, offering dominant assortments across a growing number of categories, including furniture, lighting, textiles, bathware, decor, outdoor and garden, as well as baby and children's products) in two successful Uniform Domain-Name Dispute-Resolution Policy (UDRP) proceedings before the National Arbitration Forum.
- ▶ Defended an international luxury cosmetics brand with 300-plus retail locations and 800-plus international locations against "false labeling" allegations.
- ▶ Defended the world's largest green-cleaning products company in a nationwide "false labeling" class action.



- ▶ Providing privacy and cybersecurity counsel to several high-end fashion brands.
- ▶ Worked with a vendor for fashion shows in liability waivers and design agreements.

Intellectual Property

- ▶ *BSG Tech LLC v. The Bon-Ton Department Stores, Inc.*, 2:14-cv-1126 (E.D. Tex. 2014). Represented defendant The Bon-Ton Department Stores, Inc. in a patent infringement matter relating to wide access databases and database systems and self-evolving database and method of using same.
- ▶ Represent various companies, including a wholesaler of homegoods, high-end swimsuits and clothing line, in connection with trademark and copyright protection and enforcement, co-branding and IP licensing agreements, anti-counterfeiting, patent, domain name disputes, global portfolio management and other intellectual property matters.
- ▶ Counsel to clients developing mobile apps and the offering of the same through online app stores and/or markets.
- ▶ Successfully defended an international consumer goods distributor against patent mismarking and Lanham Act claims.
- ▶ Successfully resolved a sportswear apparel trademark infringement case.
- ▶ Represented a national retailer of young women's clothing in a trademark opposition before the Trademark Trial and Appeal Board (TTAB) against an application for a confusingly similar design mark.
- ▶ Represented a U.S. jewelry company in a trademark infringement action against a competitor in a federal district court.
- ▶ Represented a manufacturer and online retailer of innovative pet products in a defamation claim brought by a former distributor whose account was suspended on Amazon.com for unauthorized use of the pet products company's name and trademark and product reviews associated with the company's branded product.
- ▶ Represented a national retailer of young women's clothing defending several actions of alleged copyright infringement and contributory infringement by an alleged owner of copyright in common textile print designs in federal district court.

Products Liability

- ▶ Advised and represented multiple consumer goods manufacturers in reporting potential product hazards to the U.S. Consumer Product Safety Commission involving apparel, footwear, sporting goods and electronics; responding to and correcting hazard reports submitted by third parties to the U.S. CPSC Safer Products database; and devising and negotiating terms of product recall.

- ▶ Assisted publicly traded Canadian company with due diligence and product safety compliance matters arising in the course of its acquiring a new product line from an American manufacturer.
- ▶ Represented publicly traded international apparel company in products liability litigation involving allegations that the company's apparel did not comply with requirements of the U.S. Flammable Fabrics Act.
- ▶ Represented national retailer and theme park operator in winning dismissal of class action lawsuits alleging consumer privacy violations of the California Song-Beverly Credit Card Act and in developing Song-Beverly compliance programs.
- ▶ Won summary judgment on behalf of national retailer in high-exposure products liability suit alleging that the retailer was responsible for toxic exposures occurring prior to our client's acquisition of the retail locations at issue.

Real Estate

- ▶ Represented a California real estate investment company on all land use work related to a major shopping center renovation project, which includes demolition and construction of four new buildings totaling 116,000 square feet of space, including an 83,000-square-foot grocery store.
- ▶ Represented owner of a former approximately 211,000-square-foot department store building in a condemnation by a city for construction of a new sports arena. The taking and subsequent negotiations were complicated by the unusual ownership structure of the property being acquired: the department store and underlying land were separate parcels having separate ownership. Initially, the city offered \$4.3 million for all interests in the property—with \$0 attributed to the department store building. The two property owners settled the matter for a total of \$12 million, with \$7 million being paid to the client, the owner of the department store building.

Employment, Labor, Benefits & Immigration

- ▶ Obtained summary judgment in U.S. District Court for the Northern District of California on behalf of B&H Education Inc., which owns and operates Marinello Schools of Beauty, in a suit brought by cosmetology students who sought to represent a putative class claiming they should receive wages for training on paying customers in student clinics.
- ▶ Obtained summary judgment in favor of prominent Philadelphia-based cosmetology school in wage-and-hour class and collective action case in which plaintiffs—current and former cosmetology students—alleged employee status and failure to pay minimum wages under the FLSA, Pennsylvania Minimum Wage Act and Pennsylvania Wage Payment and Collection Law.
- ▶ Represented a bath and beauty products retailer in connection with website accessibility, such as compliance with Braille reading machines, under the Americans with Disabilities Act (ADA).



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- ▶ Obtained full dismissal on behalf of a global leader in the design, manufacture, marketing and distribution of branded lifestyle apparel, footwear and accessories in connection with a disability discrimination and retaliation case in New York State Supreme Court. Duane Morris previously obtained a favorable settlement on a gender, disability, sexual orientation, age and retaliation case.
- ▶ Negotiated a favorable settlement for an online retailer of high-quality New York City-related products, in connection with a pregnancy discrimination matter.
- ▶ Represented a high-end department store in connection with labor and employment matters.
- ▶ Developed a Rapid Response Program for a manufacturer of premium chocolate products.
- ▶ Counsel to a leading private label of condiments and other food products in connection with collective bargaining and other employment and union issues.
- ▶ Represented a seller of outdoor gear and apparel in an employment action brought by a former manager. Through a series of demurrers, a motion to strike and a motion for summary judgment, limited what started as a seven-claim action to claims for retaliation and emotional distress. Settled the action following mediation for a nominal sum.
- ▶ Represented a fashion designer concerning employment advice and counsel on terminations and threatened claims of discrimination.
- ▶ Obtained on behalf of a German fashion company a settlement after mediation that the client found favorable concerning a breach of contract claim by one of its U.S. executives.
- ▶ Successfully defended fashion company against claims brought by another fashion company alleging violation of a non-solicitation provision.

Wealth Planning

- ▶ Obtained “no change” finding from the IRS after an audit for a wealthy family that owns many brand-name restaurant retail outlets along the East Coast.

Business Reorganization & Financial Restructuring

- ▶ Represented a public company that designed and produced manufacturing equipment for industrial and consumer products in its and its affiliates’ chapter 11 cases.

Health Law

- ▶ Advised a large national grocery store chain and a pharmacy chain regarding legal issues relating to the establishment of retail medicine clinics on-site and anti-kickback issues pertaining to pharmacy referrals.
- ▶ Represented a supermarket chain regarding employee health clinics.
- ▶ Assisted a consumer goods distributor to develop a concierge medicine product that they were going to sell to employees, as well as potentially sell commercially in stores.

DUANE MORRIS ALERTS

Our attorneys provide thought leadership on industry issues. Recent analysis include:

- ▶ San Francisco Employers Beware: Retail Workers Bill of Rights Takes Effect July 3, 2015
- ▶ California Transparency in Supply Chains Act—SB 657 Enforcement by California Attorney General



“Despite the economic and artistic contributions of fashion, very limited legal protections for fashion design are currently available in the United States. ... While the fashion industry will likely continue trying to obtain greater protection, it may be comforting for designers to know

options exist with respect to protecting the innovation and creativity in their work.”

—DUANE MORRIS PARTNER **CHRISTIANE SCHUMAN CAMPBELL** authored “**Protecting Fashion Designs Through IP Law**” for *The Legal Intelligencer* (April 14, 2015).



“In order for there to be copyright protection, a design has to meet some standard of originality and non-functionality. A design [with] some kind of pictorial or graphic certainly overcomes that hurdle of originality.”

—DUANE MORRIS PARTNER **NICOLE MCLAUGHLIN** is quoted in a *Fortune.com* article (January 7, 2016).

PROFESSIONAL AFFILIATIONS

Our attorneys serve on boards, support and present at industry conferences and organizations, including:

FashInvest



FashInvest is the first community for emerging growth companies within the fashion, fashion tech, retail and branded goods consumer sectors.

Las Vegas Fashion Council

LVFC is committed to advancing the Las Vegas fashion industry and expanding the economy by cultivating relationships between fashion professionals, students, emerging artists, community leaders and organizations.



Professional Retail Store Maintenance Association

PRSM is committed to serve facilities management professionals and to lead the industry by providing resources, solutions networking and knowledge sharing.



Retail Marketing Society



An organization focused on exploring issues affecting the retail industry, including apparel, accessories, cosmetics, supermarkets, electronics and real estate.

OFFICE LOCATIONS AND REACH



UNITED STATES

Atlanta
Baltimore
Boca Raton
Boston
Cherry Hill
Chicago
Houston
Lake Tahoe
Las Vegas
Los Angeles

Miami
Newark
New York
Philadelphia
Pittsburgh
San Diego
San Francisco
Silicon Valley
Washington, D.C.
Wilmington

INTERNATIONAL

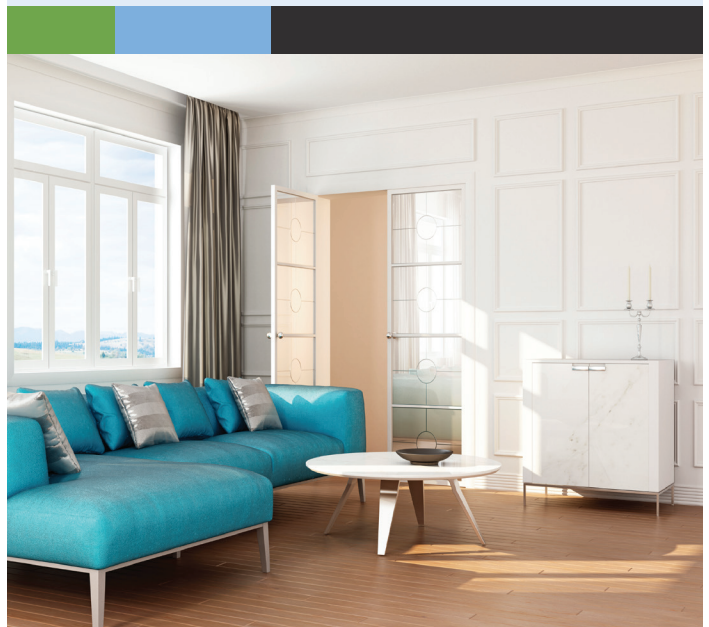
Hanoi
Ho Chi Minh City
London
Myanmar
Oman
Shanghai
Singapore

- > Joint ventures in Myanmar, Oman, Shanghai and Singapore
- > Alliances in Mexico and Sri Lanka
- > Leadership positions with international networks of independent law firms

2015 HIGHLIGHTS

- > 80+ transactions
- > \$725+ million in reportable value
- > 402,000 square feet of retail space
- > 20+ intellectual property transactions including management of global trademark portfolios, copyright protection and enforcement, co-branding, licensing
- > Managed 5 trademark portfolios

Figures are from reportable transactions.



FOR MORE INFORMATION,
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