The Katten Kattwalk® & Kattison Avenue

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Letter From the Editors


We hope that all our readers enjoyed their holiday season and are having a wonderful start to the new year. As we transition into 2026, we are excited to bring you the latest legal updates from the fashion, retail, luxury, beauty and advertising industries in our combined winter issue of *The Katten Kattwalk* and *Kattison Avenue*.

First, Litigation Partner and Deputy General Counsel **David Halberstadter** delves into Public Domain Day, when copyright protection for an entire year's worth of older works expires, which is celebrated by many creatives and content creators on January 1. These works then become freely available to be incorporated into new works or exploited for almost any purpose without permission, presenting myriad opportunities for retailers, fashion designers and other advertisers. Then, **Cynthia Martens**, outside counsel to Katten, discusses New York State's new laws to regulate the use of generative artificial intelligence in the creative industries that call the Big Apple home. Following her article, we hear from Health Care Partner **Anthony Del Rio** and Associate **Julia DeVincenzi**, who explore how medical spas have become increasingly intertwined with fashion, beauty and entertainment, evolving from a niche wellness service into a core element of the aspirational lifestyle promoted by influencers and luxury brands. Afterwards, Intellectual Property Partner **Nathan Smith** writes about what happens when a famous designer leaves the label and the business keeps using the designer's surname as a trademark. Next up, Advertising and Brand Litigation Partner and Co-Chair **Christopher Cole** discusses "net-zero" claims by American corporations and why such claims are disappearing from the market. Finally, we hear again from **David Halberstadter** and Commercial Litigation Associate **Asena Baran**, who provide an update on their previously authored article about the ongoing copyright infringement case between British fashion house Vivienne Westwood and three UK-based graffiti artists.

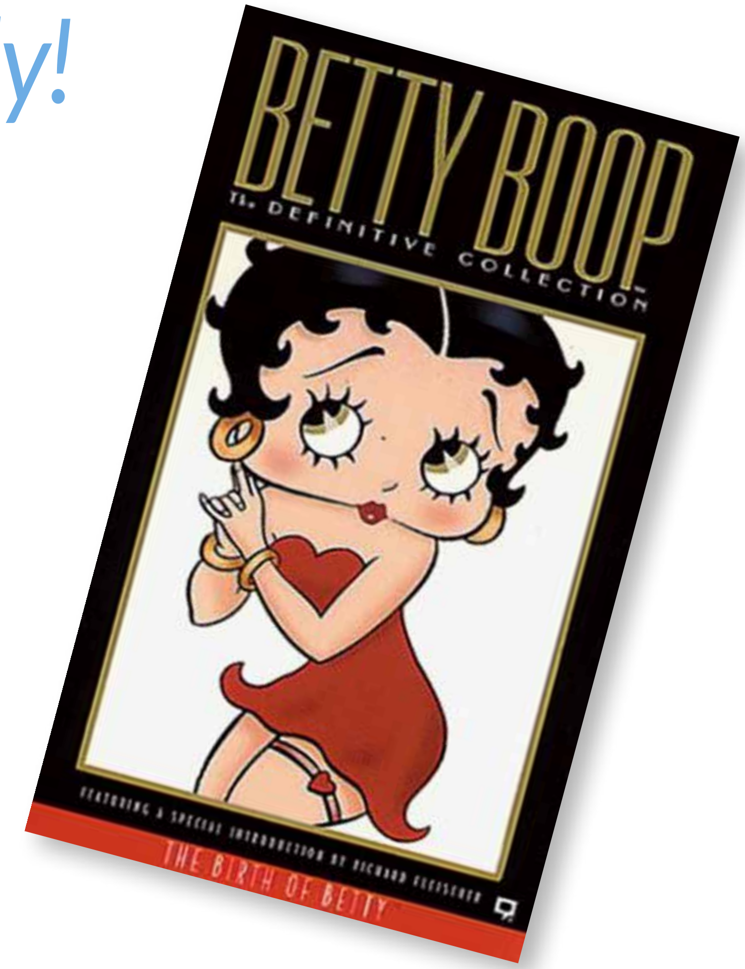
We hope you enjoy reading this issue as much as we enjoyed putting it together. As always, please don't hesitate to contact Katten with your fashion and advertising law questions.

Warmly,

Karen Artz Ash and **Jessica Kraver**

In This Issue

Works Entering the Public Domain Present Commercial Opportunities for Retailers and Advertisers — But Tread Carefully!

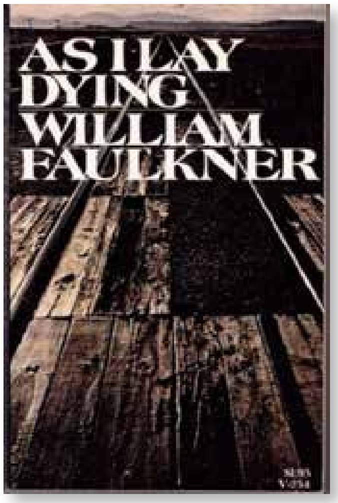


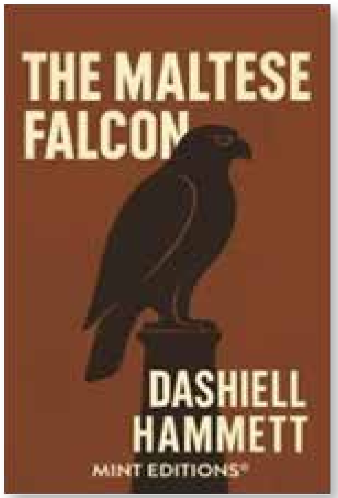
By **David Halberstadter**

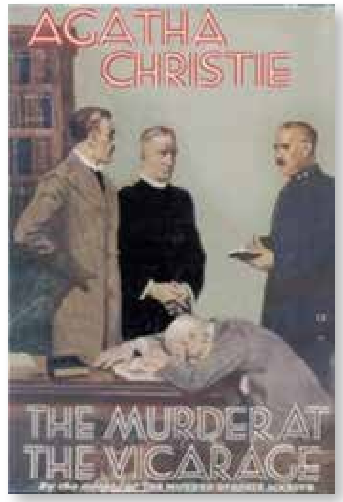
Many authors, artists, musicians and other content creators celebrate January 1 as Public Domain Day — the day upon which copyright protection for an entire year's worth of older works expires. That's because these works become freely available to be incorporated into new works or exploited for almost any purpose without permission. But Public Domain Day presents myriad opportunities for retailers, fashion designers and other advertisers as well.

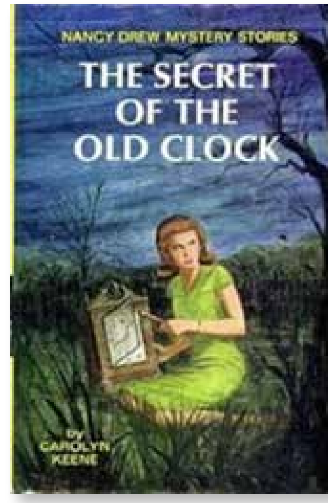
All copyright-protected works — books, magazine articles, films, musical compositions, sound recordings, comic books, comic strips, cartoon and other distinctive characters — eventually lose their protection and become available for the public to use freely. In the United States, works that were published or registered for copyright protection before 1978 generally have a copyright term of 95 years, meaning that their copyrights expire on January 1 of the 96th year. Accordingly, works that were first published or registered in 1930 entered the public domain on January 1, 2026.

There are circumstances under which such works could have entered the public domain earlier than this; for example, if they were not published with a proper copyright notice or if they were not timely renewed after an initial term of 28 years. Additionally, the rule is different for works that were authored before 1978 but never published or registered. The rule is also different for sound recordings, which originally were not eligible









for federal copyright protection separate from the musical composition embodied in the recording. They initially gained federal protection prospectively in 1972, and pre-1972 sound recordings did not gain federal protection until 2018. Now, federal copyright in pre-1972 sound recordings subsists for 100 years following their publication, which means that sound recordings from 1925 entered the public domain on January 1.

Once a work enters the public domain, anyone can use it without permission or a license. Anyone may publish a public domain novel in its entirety, for example, or use its storyline to create a play, a musical, a motion picture or a television series. Motion pictures that have entered the public domain may be remade, or a prequel or sequel may be created. In short, public domain works can be a fertile source of new creativity, new art and new imagination — in fact, that is the very point of bestowing copyright protection on works for a limited (though quite lengthy) period of time. However, it is important to emphasize that other countries have their own copyright laws, and a work that has entered the public domain in the United States may still have copyright protection in foreign territories.

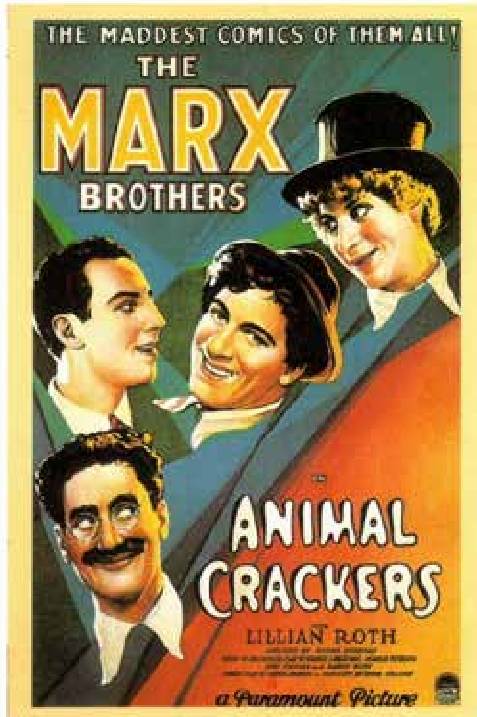
Retailers, including those in the fashion industry, regularly make licensed use of copyrighted works and occasionally rely on the "fair use" doctrine to make unlicensed use of protected works. In some instances, these unlicensed uses have resulted in copyright owners asserting claims and commencing litigation, as Katten previously wrote about in this article.

For example, retailers frequently incorporate musical compositions or sound recordings in their advertisements, TikTok videos and other promotional materials. Recognizable clips from motion pictures are used to help tell a product's story, and recognizable cartoon characters may become brand ambassadors. Artwork, including the works of street artists, is incorporated not only into advertising for merchandise and apparel, but sometimes incorporated into shoe and fabric designs. For the most part, when copyright-protected works enter the public domain, they become available for advertising and promotional uses without a license and without relying on the defense of fair use.

So, what classic works entered the public domain on New Year's Day 2026? The Center for the Study of the Public Domain at Duke University publishes an annual, comprehensive list of such works at this link here. With a nod of appreciation to this publication, here are some of the more notable entries.

Among the books that have just entered the public domain are *As I Lay Dying* by William Faulkner; *The Maltese Falcon* by Dashiell Hammett; Agatha Christie's *The Murder at the Vicarage*, which is the first novel featuring the Miss Marple character; the first four Nancy Drew books, beginning with *The Secret of the Old Clock*; *The Little Engine That Could*; and certain works by Noël Coward, T.S. Eliot, Evelyn Waugh, John Dos Passos, Edna Ferber and W. Somerset Maugham. The literary character, Sam Spade, who is the protagonist of *The Maltese Falcon*, had been used in commercials and advertising during the mid-20th Century.

Works Entering the Public Domain Present Commercial Opportunities for Retailers and Advertisers — But Tread Carefully! *(continued)*



Notable films that entered the public domain include *All Quiet on the Western Front*, which won the Academy Award for Best Picture; *King of Jazz*, which included Bing Crosby's first feature-film appearance; popular all-time favorite *Animal Crackers*, starring the Marx Brothers ("One morning I shot an elephant in my pajamas. How he got in my pajamas, I don't know."); *Soup to Nuts*, which starred later members of The Three Stooges; Greta Garbo's first "talkie" film; Jean Harlow's film debut; and *The Big Trail*, which featured John Wayne's first leading role.

Although the films themselves may have entered the public domain, that does not give a retailer or other advertiser carte blanche to use clips and recognizable scenes to market their goods and services. That's because motion pictures include the photographs, likenesses and voices of recognizable actors and other performers. Even though these celebrities may have passed away, their heirs may own and control their "post-mortem" rights of publicity, and the heirs' consent may be required to incorporate the deceased performers in advertisements. It is worth noting that a deceased person's post-mortem right of publicity depends upon the laws of the state in which he or she resided at the time of death, and different states have different statutes (or common law) governing the commercial use of a deceased person's name, voice, photograph or likeness.

Early iterations of numerous cartoon and animated characters entered the public domain as well. But there are greater risks involved in making unfettered use of these characters in new works. For one thing, it is only the version of the characters as they existed in 1930 that has entered the public domain; later revisions to and modernizations of such characters, as well as later storylines featuring the characters, remain subject to US copyright protection. In addition, many characters are also protected by trademark law, so the owners of characters that have entered the public domain may have other legal recourse for unlicensed uses by members of the public.

Among the 1930-vintage characters that have entered the public domain are: "Betty Boop" from Fleischer Studios' *Dizzy Dishes*; "Rover," who was later renamed "Pluto," in certain Disney works; "Blondie" and "Dagwood" from the *Blondie* comic strips; and several "Mickey Mouse" cartoons and comic strips. Betty Boop has been featured in numerous commercials and advertising campaigns, most famously for Lancôme mascara, while Blondie and Dagwood have been used to promote A&W restaurants, Kraft Foods and Kodak, among others.

- Musical compositions — the musical notes and lyrics that typically were published as “sheet music” — entered the public domain too. For example, *I Got Rhythm*, which previously appeared in advertising, including Toyota’s iconic “Oh! What a feeling” campaign in the 1980s, *I’ve Got a Crush on You*, *But Not for Me*, and *Embraceable You*, all of which were composed by George Gershwin with lyrics written by his brother, Ira, are now freely usable. So are *Georgia on My Mind* (music by Hoagy Carmichael, lyrics by Stuart Gorrell), *Dream a Little Dream of Me* (music by Fabian Andre and Wilbur Schwandt, lyrics by Gus Kahn), and the first English translation of *Just a Gigolo*. “Georgia on My Mind,” particularly Ray Charles’ version, is famously used in ESPN’s annual advertising campaign for the Masters Tournament.

Finally, a few of the notable sound recordings that have lost federal copyright protection in the United States include Marian Anderson’s rendition of *Nobody Knows the Trouble I’ve Seen*, *Yes Sir, That’s My Baby*, recorded by Gene Austin, and *Sweet Georgia Brown*, recorded by Ben Bernie and His Hotel Roosevelt Orchestra.

Using public domain works for commercial purposes, especially creative elements that may be closely associated with another brand and therefore may be protected by trademark law, is not an entirely risk-free proposition. But with careful vetting and a thoughtful intellectual property risk assessment, such works can become a treasure chest of creative advertising opportunities.

Fashion's Machine Age?

Fashion and entertainment professionals take note as New York enacts new AI laws.

By **Cynthia Martens**

New York City is the sun around which the US media and fashion system orbits, home to numerous modeling agencies and thousands of models and photographers, as well as many leading fashion brands and advertising agencies.

Now, New York State, through several new laws, is regulating the use of generative artificial intelligence (AI) in the creative industries that call the Big Apple home. In a nod to entertainers, on December 11, 2025, Governor Kathy Hochul signed two of the bills into law at the local New York office of SAG-AFTRA, the labor union representing film, television and radio artists.

Senate Bill 8391, which went into immediate effect, requires the creators of expressive audiovisual works who want to use a deceased personality's digital replica in an audiovisual work or sound recording, or for the live performance of a musical work, to secure the prior consent of the deceased personality's heirs. The new law also amends a key definition, such that "digital replica" now means "a computer-generated, highly realistic, electronic performance that is readily identifiable as the voice or visual likeness of an individual, but either the actual individual did not actually perform or the actual individual did perform, but the fundamental character of the performance or appearance has been materially altered."

Back in 2020, when New York first enacted its post-mortem right of publicity, state law carried narrower protections for unauthorized use of a deceased performer's digital replica, requiring only a disclaimer (if the digital replica was unlikely to deceive the public into thinking that its use was authorized).

Andriy Baidak/Shutterstock.com

"New York has always been a home for artists, and today it stands as a model for how to safeguard not only our members, but the broader public," observed SAG-AFTRA New York Local President Ezra Knight in response to the new legislation.

Assembly Member Linda Rosenthal, a co-sponsor of the bill, said in a statement that the "proliferation of deepfakes and other artificial intelligence has blurred the lines between the digital world and reality" in harmful ways. "Consumers have a right to know if the product or service being advertised to them is by a real person or a computer-generated avatar," she added. "The reduced production costs for companies using AI is not worth the hefty price of obscuring reality."

Relatedly, Senate Bill 8420-A, which will be effective in June 2026, requires advertisers to conspicuously disclose the known use of "synthetic performers" in commercial advertisements, with a civil penalty of $1,000 for a first violation and $5,000 per subsequent violation. A "synthetic performer" is defined as "a digital asset that is created, reproduced, or modified by computer, using generative artificial intelligence or a software algorithm, that is intended to give the impression that the asset is in an audio, audiovisual, and/or visual performance of a human performer when it is not recognizable as any identifiable natural performer."

From an enforcement perspective, the law's requirement of clear and conspicuous disclosure may be analogous to the existing standard for influencer content on social media, which requires that disclosures must be simple, clear and "hard to miss," per the Federal Trade Commission.

These legal developments have arrived as the global fashion industry explores AI usage in the generation of creative commercial materials. Last year, Swedish retail heavyweight H&M set the internet on fire with the news that it was working with fashion models to create their digital twins using generative AI.

"Creativity and being radically curious have always defined who we are at H&M. Now, we're exploring new territory — generative AI — and discovering how technology can unlock new ways to showcase our design in innovative ways, while still staying humble to our human-centric approach," noted Jörgen Andersson, the company's chief creative officer, in a LinkedIn post at the time.

New York State legislators have been actively exploring ways to curtail potential misuses of AI at the development stage as well. On December 19, 2025, Governor Hochul signed into law the Responsible AI Safety and Education Act (RAISE Act), which takes effect on January 1, 2027. The legislation applies to companies with over $500 million in annual revenue, requiring them to adhere to certain AI-development requirements, including the adoption of safety and security protocols, which must be promptly shared with relevant authorities, and the conducting of annual safety reviews. The New York attorney general is empowered under the RAISE Act to seek penalties of up to $1 million for a first infraction and a maximum of $3 million for later infractions. New York's Department of Finance will be tasked with monitoring AI development in a newly established AI office.

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Citizen advocacy groups have expressed hope that the RAISE Act, together with the related Transparency in Frontier Artificial Intelligence Act in California, sets a baseline for transparency and ethics in AI development that may be expanded in the future.

New York's Senate Bill 1169A, which would amend state civil rights law, relates to the potential for the replication and magnification of bias through AI tools and is still in committee.

Med Spas at the Intersection of Beauty, Wellness and Law

By Anthony Del Rio and Julia DeVincenzi

Medical spas (commonly called "med spas") blend the clinical capabilities of an aesthetic medical practice with the hospitality and branding of a luxury spa. They typically offer nonsurgical cosmetic procedures such as neuromodulators and fillers, laser hair removal and skin resurfacing, microneedling, chemical peels, body contouring and increasingly, IV therapy and weight management injectables. Although many offerings feel "spa like," a substantial portion of med spa services constitute the practice of medicine in most states, which means they must be ordered, performed, or appropriately delegated and supervised by licensed clinicians. This hybrid identity drives consumer appeal and growth, but also invites a complex overlay of healthcare regulation, advertising rules and heightened enforcement.

Why Med Spas Matter to Fashion: Image, Influence and Integration

The med spa industry has become increasingly intertwined with fashion, beauty and entertainment, evolving from a niche wellness service into a core element of the aspirational lifestyle promoted by influencers and luxury brands. For models, stylists, creative directors, influencers and brand executives, med spas provide practical, repeatable interventions that deliver camera-ready results with minimal downtime, aligning with demanding calendars, frequent travel and visual performance standards. At the same time, social media platforms have accelerated this shift, giving rise to "medical influencers," or dermatologists and plastic surgeons who showcase aesthetic treatments alongside designer looks. Collaborations between fashion brands and med spas increasingly include VIP events, backstage "glam" readiness activations and loyalty programs. Influencer marketing and user-generated content further amplify this convergence.

These relationships carry legal and business implications, and as collaborations expand, both the fashion and med spa industries must navigate health care and consumer protection rules that apply even in nontraditional settings. On the commercial side, fashion houses and talent agencies must structure partnerships with med spas to avoid prohibited fee splitting or "patient brokering" under state law and ensure that any management or brand licensing arrangement does not improperly influence the med spa's clinical judgment. On the marketing side, cross promotions, influencer testimonials and before and after content are regulated: the Federal Trade Commission (FTC) requires truthful, non misleading claims and clear, conspicuous disclosure of any financial or promotional arrangement between the providers and endorsers of the product or procedure. Moreover, when photos or videos intended for sharing on digital or other platforms include identifiable patient information — for example, facial features, names or distinguishing marks — the appropriate Health Insurance Portability and Accountability Act (HIPAA) authorization and privacy safeguard mechanisms must be in place. Fashion week pop-ups or mobile activations introduce additional issues: health care scope of practice and supervision rules follow the state where the activation occurs, and off site events can also trigger additional facility, device and emergency preparedness requirements.

Business Trends: Rapid Growth, Aggregation and New Service Lines

The med spa sector has expanded dramatically over the last decade, supported by consumer demand for minimally invasive procedures and the normalization of "maintenance" aesthetics. Analysts continue to project double digit annual growth. Private equity and growth capital investment have accelerated, with billions deployed across hundreds of transactions, fueling multi location platforms, franchising and roll up strategies. Investors favor playbooks that centralize non clinical functions (marketing, revenue cycle, human resources and procurement) while leaving clinical control to licensed professionals.

Operators are diversifying service lines (e.g., energy based skin devices, hair restoration, IV hydration, wellness injections and GLP 1 related programs) and experimenting with recurring revenue models, memberships and subscription maintenance plans. Digital front doors (e.g., virtual consults, intake assisted by artificial intelligence and e-commerce for skincare) complement brick and mortar footprints. At the same time, payor exposure remains limited because most med spa services are cash pay, which can simplify revenue but places heightened scrutiny on pricing transparency, refund policies and consumer protection compliance.

US Legal Landscape: Ownership, Delegation, Advertising and Privacy

Regulation is largely state-based and evolving. Four themes dominate:

1. **Corporate practice and ownership**. Many states enforce the corporate practice of medicine (CPOM), restricting who can own or control entities that deliver medical services. In strict CPOM states, physician ownership is required for medical practices, and unlicensed persons

cannot control clinical decisions. In others, nurse practitioners or physician assistants may own or co-own; in further others, lay ownership is permissible but does not excuse compliance with medical practice rules. Where CPOM applies, the MSO PC model is common, where a physician-owned professional entity retains clinical control; a separate management services organization provides non-clinical support for fair market value fees that comply with fee splitting restrictions.

2. **Scope of practice, delegation and supervision**. States define who may perform injectables, laser/energy procedures and invasive skincare, and what supervision is required. Many require a physician, nurse practitioner or physician assistant to conduct a "good faith" evaluation before treatment; some prohibit delegation of specific laser uses, and most strictly limit what estheticians may perform without medical licensure. Violations (e.g., unlicensed practice, inadequate supervision or "rent a medical director" arrangements) are leading enforcement targets.

3. **Advertising and endorsements**. The FTC polices deceptive or unsubstantiated claims, guarantees and undisclosed paid endorsements; state boards often regulate use of titles, testimonials and before and after depictions. Claims must be evidence-based, risks must be disclosed, photos should be representative and non misleading, and influencer posts must be properly labeled. In fashion collaborations, both the brand and the provider can be accountable for noncompliant messaging.

4. **Privacy, safety and product integrity**. With the rise of "medical influencers" on social media, patient images and encounters are increasingly shared online, sometimes in real time. As health care providers, med spas must protect patient information under HIPAA and state privacy laws, especially when using imagery or engaging in digital marketing. US Food and Drug Administration (FDA) oversight touches devices and drugs; recent warnings emphasize counterfeit or unapproved injectables and compounding limits for popular weight loss medications.

Recent Business and Legal Developments to Watch

With the increasing popularity of med spas, state legislatures and medical boards are recalibrating med spa rules. Several 2024-2025 developments illustrate the trajectory:

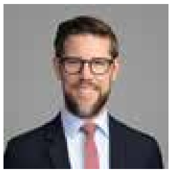
- States are formalizing licensing and facility standards. Rhode Island enacted legislation to regulate and license medical spas, reflecting a broader move toward clearer facility oversight. Other states are considering or adopting requirements for posted physician oversight, written protocols and emergency preparedness.
- Supervision and delegation are tightening. Texas advanced measures classifying med spas and IV clinics as regulated medical practice settings and requiring policies on delegation, supervision and training; proposals would require initial clinical assessments and posted notices when a physician is not on site. Courts and boards continue to hold medical directors liable for inadequate supervision, even when they did not personally perform procedures.
- Scrutiny of ownership and management services organizations (MSO) is rising. Regulators have questioned "straw" physician ownership and management contracts that encroach on clinical control. Both Oregon and California moved to restrict certain MSO practices, and boards in other states have issued guidance warning against arrangements that mask lay control over medicine.
- Scope of practice adjustments continue. States are updating who may do what and under whose supervision. Notable actions include licensing frameworks for advanced estheticians and modifications to master the esthetician scope; some states limit the delegation of lasers to specific license types.
- Enforcement is active and multifront. Boards and attorneys general have pursued cases involving unlicensed practice, misleading advertising, improper use of medical titles, and counterfeit or unapproved drugs. FDA and pharmacy boards have focused on compounding and sourcing for injectables; Occupational Safety and Health Administration (OSHA) and HIPAA enforcement remain evergreen risk areas.

For fashion industry collaborations, these shifts have practical consequences. Brand partnerships should be structured to respect CPOM and fee splitting rules, endorsements must meet FTC standards, pop up activations require state by state supervision and device compliance, and any patient identifying content needs HIPAA authorization and robust consent processes. Investors should pressure test MSO PC models against current state guidance, ensure management fees reflect fair market value and confirm that quality oversight, credentialing and incident response are real, not just "binder policies."

Practical Takeaways for Counsel and Executives

Med spas operate at a culturally powerful nexus of aesthetics, wellness and retail, but they are still medical practices for compliance purposes. A defensible model anchors clinical control with licensed professionals, aligns delegation and supervision with state law, treats marketing as regulated speech and hardwires privacy, safety and product integrity into daily operations. For fashion brands and agencies, the safest collaborations separate marketing from medicine, avoid contingent compensation tied to clinical revenue, and harmonize disclosures and claims across platforms. Given accelerating growth and enforcement, disciplined governance, documented protocols and periodic compliance audits are now table stakes for sustainable scale.

When a Name Becomes a Mirage: The CJEU on Designer Surnames as Trade Marks



By Nathan Smith

Fashion designer Jean-Charles de Castelbajac

Fashion houses trade in dreams, and often in names. But what happens when a famous designer leaves the label, and the business keeps using the designer's surname as a trade mark?

The decision of the Court of Justice of the European Union (CJEU) in *PMJC* confirms that the continued use of a designer's surname as a trade mark by a successor company remains permissible following the designer's departure, provided that the way the trade mark is used does not mislead consumers into believing the designer is still creatively involved. While the mere separation of a designer from their eponymous brand is not, by itself, deceptive, the court emphasised that context matters. Advertising, visual presentation and the appropriation of a designer's distinctive aesthetic, particularly where the designer's copyright is infringed, may create a sufficiently serious risk of consumer deception.

Where use of the trade mark fosters a false impression of ongoing creative authorship by the original designer, the registered trade mark becomes vulnerable to revocation for deceptive use.

Key Takeaways for Brand Owners and Designers

For brand owners:

- A designer's name can continue to be used as a trade mark after they depart from a successor business.
- However, branding, advertising and product styling should not falsely imply the designer's ongoing creative involvement with the successor business.
- Borrowing from the designer's distinctive aesthetic, especially without ownership of relevant intellectual property (IP) rights, increases the legal risk of deceptive use of the designer's name, which can lead to the revocation of a registered trade mark of the designer's name owned by the successor business (even where the rights in the designer's name have been assigned to the successor business).

For designers:

- EU law accepts that, in certain contexts, the identity of the designer may form part of the characteristics of the goods for the purposes of assessing whether trade mark use is misleading.
- If a successor company suggests ongoing creative involvement where none exists, legal remedies may be available.
- Evidence such as misleading marketing or unauthorised use of signature designs may be decisive.

Background: Change of Ownership and the Dissolution of a Creative Relationship

The case involves the French design company JEAN-CHARLES DE CASTELBAJAC (the Company), which owns registered trade marks for "JC de CASTELBAJAC" (the Trade Marks), reflecting the name of its founder, fashion designer Jean-Charles de Castelbajac (JCC). Following the insolvency of the Company, ownership of the Trade Marks was transferred to a separate entity, PMJC. JCC continued to work for PMJC for a short while before parting ways. PMJC then sued JCC for infringement of the Trade Marks.

In return, JCC applied to revoke the Trade Marks on the basis that the PMJC was using the Trade Marks deceptively to suggest that JCC still had a hand in clothing sold by PMJC under the Trade Marks (it being notable that such clothing included a design for which JCC owned the copyright — the French courts found two instances where PMJC infringed JCC's copyright in designs that had not been assigned to PMJC with the Trade Marks — this reinforced the impression that the clothing was still authentically JCC's, even though he was no longer involved).

Accordingly, the Paris Court of Appeal revoked the Trade Marks for deceptiveness. On appeal, the Court de Cassation asked the CJEU whether EU law permits the revocation of a registered trade mark when the use of a designer's name leads the public to believe the designer is still involved in the design of goods bearing that trade mark, when that is no longer the case.

Key Legal Principle: Deception Centres on Use, Not the Name Alone

Under EU law, a trade mark can be revoked where its use misleads the public, "particularly" as to the nature, quality or geographical origin of goods. The CJEU confirmed that the "creative origin" of a product (i.e., who designed it) can be a relevant characteristic, and misleading consumers as to the creative origin can justify revocation.

Importantly, the CJEU then went on to reaffirm a long-standing principle that the mere fact that a label bearing a designer's name has been separated from the designer does not, by itself, make the mark deceptive. It is expected that most consumers recognise and appreciate that not every eponymous fashion label is still controlled by its namesake. That said, if the designer's name is used in a way that creates a false impression or a sufficiently serious

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risk that the designer remains involved, the CJEU's decision confirmed that a registered trade mark of the designer's name is vulnerable to a revocation challenge.

Factors Indicating Misleading Use

Determining when the use of a designer's name becomes misleading is context-specific. The CJEU highlighted that certain factors in this case suggested a risk of consumer deception, namely the use of visual elements closely associated with JCC's distinctive creative style, particularly where such use infringed JCC's copyright.

The Advocate General, whose reasoning the Court largely echoed, elaborated on the types of proof that matter. Evidence could include advertising or communications that feature the designer, suggest collaboration when none exists or use distinctive stylistic motifs closely associated with the designer but that are not owned by the company. Ultimately, revocation requires solid evidence that the mark's use creates a false impression of the designers ongoing creative involvement.

However, the decision leaves practical questions to be resolved by the national courts; for example, how many misleading incidents are required, how extensive must the advertising be and how far a brand owner can borrow from a designer's aesthetic before crossing the line.

Why It Matters for Brands and Designers

For brand owners, this decision allows continued use of a designer's name for a successor business, but prevents misleading suggestions of ongoing involvement of the designer. Maintaining the use of a designer's name as a trade mark is permitted, but it cannot be paired with messaging, visuals or product styling that mistakenly leads consumers to believe the designer is still at the drawing board.

For designers, the ruling protects reputational capital after an exit. It recognizes that the "person" behind a design can be a product characteristic in its own right. If a successor company leans too hard into a designer's signature motifs (where they have not been assigned to the successor company) or falsely signals the designer's continuing involvement, there is a meaningful route to revoke the trade mark registration.

Maintaining the Name Without Misleading Consumers

Names carry weight in fashion, but they do not confer a license to imply creative involvement that no longer exists. The CJEU's message is balanced and commercially sensible. Successor companies can keep the designer's name, but not the illusion of the designer's continuing involvement. Where heritage is used to suggest a false narrative of creative control, the law can be deployed to prevent it.

**Amelie Hitchings, a trainee in our London office, contributed to this article.*

Net Zero Claims Under the Gun

By Christopher Cole

What a difference a few years can make. Three years ago, American corporations were eager to claim that they would achieve "net zero" carbon emissions or would be "carbon-neutral" by a certain date — typically 2050. At the time, it was believed that such claims were helpful for marketing.

Today, such claims are disappearing from the market due to ongoing questions and a worldwide backlash against all matters stemming from environmental, social and governance (ESG) questions about offsets, as well as litigation.

Factor 1: Consumers have pivoted from prevention to mitigation

Many consumers seem to accept that cutting carbon dioxide emissions will no longer limit global warming to 1.5 degrees Celsius, which is the temperature target set forth in the Paris Climate Agreement. Slowing global warming is still perceived by many as a good idea, but remaining ESG investors have pivoted to technological moonshots, such as a carbon capture and even shooting atmospheric particles into the sky to dim the sun. Communities seem resigned to adaptation, rather than mitigation. Moreover, some of the computer-based technologies that consumers previously perceived as "saving" the environment have turned out to consume vast amounts of energy. Legitimate carbon offsets will remain useful tools, but apart from voluntary commitments, there is no federal law requiring carbon emissions reduction in the United States. Therefore, the voluntary carbon market still exists, but is less robust than it was predicted to be.

Factor 2: Litigation risk

As technologies that can ensure most manufacturing processes emit zero carbon do not yet exist, aspirational net zero goals are usually premised on a combination of reducing Scope 1, Scope 2 and (sometimes) Scope 3 emissions, and then applying carbon offsets to cover the "last mile" in order to reach net zero commitments. Katten has previously written about burgeoning concerns regarding the validity of carbon offsets, but even assuming they are totally viable, what message does a claim of "net zero by 2050" likely convey to consumers today?

Scope 1 emissions are those directly emitted from company operations, such as through a smokestack. Scope 2 emissions are those coming indirectly, such as through purchase energy. For example, a coal-fired power plant will emit pollutants to the extent its energy is used to power company operations. Scope 3 emissions are those indirectly coming from everything else, such as employee commuting, purchased goods, and product use and disposal. The latter emissions are much harder to quantify, but tend to grow as a business grows.

Stated differently, what would a consumer seeing or hearing the statement of "net zero by 2050" assume that the advertiser had already done or is in the process of doing? The advertiser is informing consumers about its aspirations because it believes that doing so will provide a marketing boost. The litmus test of compliance will ultimately be assessed on the due date in 2050, but can the advertiser get a free pass and do nothing until 2049? How much progress towards the net-zero goal might a

reasonable consumer expect from the advertiser today? At one extreme, could the advertiser emit carbon unfettered until 2049, when it suddenly procures sufficient carbon offsets for the entirety of their emissions? At the other end, should we require advertisers who are making the claim to reduce carbon emissions or procure offsets on a straight-line reduction path to 2050?

An organization called the Science Based Targets Initiative (SBTI) provides the tools and support for a Net Zero Standard. The current standard requires that a participant commit, in writing, to a specific target, submit the target for validation to SBTI and then adhere to their communication standards going forward. There are third parties that will audit emissions against the stated commitments, including Carbon Trust and Verra.

SBTI has published a new draft standard that tries to take recent litigation outcomes into account. It remains to be seen how effective the new standard will be at insulating companies from lawsuits. We have seen an unfortunate rise in litigation attacks naming third-party certifiers, which are *de rigeur* for any company wishing to make complicated environmental claims. Fortunately, few of these lawsuits have been successful, but one still worries about their chilling effects. Simply put, companies should be rewarded in the market for honest and verifiable environmental progress.

In a 2023 decision, the National Advertising Division (NAD) and its appellate body, the National Advertising Review Board, reviewed the net-zero commitments of international food giant JBS, which had communicated a “net zero by 2040” claim. JBS’s promise was backed by a variety of measures, including engaging SBTI and a third-party auditor to verify carbon emission reduction, as well as issuing $1 billion in Sustainability Bonds to finance research and actions towards carbon reduction measures.

Nevertheless, JBS argued that its "net zero" claim was aspirational in nature and was not intended to communicate to consumers that it had already achieved reductions in carbon emissions today. NAD recommended that JBS substantially modify such claims. JBS USA Holdings, Inc. (Net Zero 2040), Report #7135, *NAD/CARU Case Reports* (February 2023).

When JBS allegedly did not comply with NAD's recommendations to modify its claims, the New York Attorney General sued the company, alleging that JBS had not made meaningful progress toward its stated goal. The New York Supreme Court dismissed the case without prejudice, and the parties settled before the attorney general could file an amended complaint. *New York v. JBS USA Food Company et al*., No. 25-067 (Oct. 30, 2025). A prominent shortcoming cited by the attorney general was JBS's inability to fully calculate Scope 3 emissions.

A recently settled case in Washington, DC, had a similar set of allegations. Tyson Foods agreed to stop making net zero claims after plaintiff activists alleged that Tyson's public statements "regarding Tyson's Climate-Smart Beef Program and Tyson's ambition to achieve net-zero greenhouse gas emissions by 2050 are false and misleading to consumers because, given the scale of Tyson's emissions, achieving these commitments would require radical changes to Tyson's beef production, and Tyson has no plan and has taken no meaningful steps to achieve this." *See Settlement Agreement between EWG and Tyson Foods*, DC Superior Court, No. 2024-CAB-005935 (filed 11/12/25).

These two cases illustrate concerns that animate much current greenwashing litigation: a focus on the mismatch between a company's aspirational advertising and its inability to completely account for supply chain activities, and a decision by activists to target high-intensity carbon-producing activities.

Factor 3: Concerns about Scope 3

If we accept the imperative that a successful business will grow its sales, Scope 3 emissions should increase — at least so long as the world operates in a fossil fuel-based economy and/or other decoupling of supplier emissions from sales growth is not achieved. Scope 3 emissions are those not produced by the company, but which result from activities of third-party suppliers and others in the value chain. They are notoriously hard to calculate. If they are included, it seems likely today that most growing businesses will not be able to achieve net zero (even 25 years from now) without the aid of carbon offsets.

Renewable energy credits (RECs) are also under scrutiny. A company that pays more for energy supply may receive RECs that signify the consumption of renewable energy from the grid. That renewable energy might be produced elsewhere. Activists sometimes criticize RECs on the basis that using them allows the consuming party to continue to burn fossil fuels while maintaining the illusion of consuming renewable energy produced (in some cases) far away. Theoretically, a company in New York could buy RECs from a wind power plant in California. It might claim that it is powered by 100 percent renewable energy — all the while continuing to spew pollutants from smokestacks. The activists want RECs to be generated closely in time and space to the consuming entity (the issue regarding the treatment of RECs is being debated as part of upcoming revisions to the Greenhouse Gas Protocol).

Factor 4: Concerns about offset validity

That leads us to concerns about offset validity, which Katten has written about before. In a nutshell, the gold rush for offsets led to the generation of offsets of dubious value. That said, offsets, if real and verifiable, should be valid. The Biden Administration even issued an unusual statement saying so. Although this statement has not been formally rescinded, one wonders whether the White House would back it today.

Factor 5: Do carbon claims still move the needle?

Greenwashing litigation is on the rise in the United States, and climate-related claims feature prominently.

Much of today's greenwashing litigation stems from societal decisions to employ market-based forces rather than command-and-control regulation to achieve environmental improvements. Market-based mechanisms are remarkably successful. However, following them may occasionally be painful. In a market-based paradigm, the judicial branch is important. Moreover, there are limitations on the messages that businesses take from, and changes in behavior, based on ad hoc court decisions, that vary by jurisdiction.

The market-based solution goes partly like this: advertisers will truthfully advertise environmental advantages of their products when compared to others. Consumers will vote with their purchases, rewarding truthful claims. The most meaningful checks on malfeasance will come from court decisions, regulatory false advertising investigations and consequent voluntary discontinuances of challenged claims. The hope is that other advertisers will learn from the hardships of those dragged into court or investigated and adjust their behavior accordingly.

Society must also rely on these mechanisms to ensure that truthful signals will permeate the market and reward the "right" behaviors. However, there are many underlying questions that are slowing down compliance. For example, many plaintiffs are reaching for defendants who should not be sued, potentially distorting the signals sent to the rest of the industry and leading to the phenomenon of "greenhushing." Where the costs of defending meritorious claims outweigh potential sales benefits from making them, companies may choose to refrain from making the claims at all.

All that said, the European Union proposed in 2026 to ban all "climate neutrality" claims. This directive has been paused, but uncertainty remains regarding how businesses in the European Union should handle carbon disclosures. There are legitimate concerns being voiced regarding whether countries with smaller emissions should even promote "net zero."

In a world where net-zero claims seem to be less impactful, is the risk still worth making such a claim? Certainly, there are values served besides generating bottom-line profits by publicly stating a net-zero commitment, but defending that statement against questions that can be merited or not, may be costly.

Why Are British Artists Suing a British Fashion House Over Graffiti on British Buildings, in America?


By Asena Baran and David Halberstadter

This case seems so straight-forward that fans of self-effacing legal articles might question why this one is worth the ink. UK-based graffiti artists Cole Smith, Reece Deardon and Harry Matthews, known professionally as DISA, SNOK and RENNEE, respectively, claim that a British fashion house, Vivienne Westwood, used images of their graffiti to adorn items of clothing without permission.[1] Glancing at the artists' complaint against the fashion behemoth, it is hard to dispute that photographs of their graffiti were printed as a collage on the suspect clothing.[2] This is boldfaced copyright infringement, right? Not necessarily.

It is unclear if the Copyright Act even protects DISA, SNOK and RENNEE's graffiti. According to the most commonly adopted definition, graffiti is "an inscription, drawing or design scratched, painted, sprayed or placed without the consent of the owner on a surface so as to be seen by the public."[3] As one court has observed, however, "[t]his unusual phenomenon of illegal and rebellious activity [is] gaining social acceptance and commercial value" such that "real estate firms hire graffiti painters to decorate building facades," even though "a legal project may be regarded as 'selling out' by the graffiti community and may thus undermine the status of the artist."[4] Such commissioned (*e.g.*, legal) graffiti is,

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without a doubt, protected by the Copyright Act as a pictorial or graphic work fixed in a tangible medium of expression.[5] Whether its illegal, albeit much cooler, counterpart enjoys the same privilege remains a subject of scholarly debate that courts all over the United States have managed to avoid.

DISA, SNOK and RENNEE's complaint does not explicitly state that their graffiti is uncommissioned, but their failure to claim the contrary; pictures showing the graffiti at issue is painted over less-artistic graphics in poorly maintained urban spaces, rather than on buildings artwashed by real estate developers with an eye for gentrification; and stated concern about becoming "corporate sellouts, willing to trade their artistic independence, legacy and credibility for a quick buck" suggest that the graffiti at issue is in fact illegal.[6] While there is no precedent on point and legality is not an explicit prerequisite for protection under the Copyright Act, courts have suggested that an illegal work may not be entitled to copyright protection under the laws of the United States.[7] In contrast, under UK law, artists "are entitled to the full scope of copyright entitlements, irrespective of the illegality of their work."[8]

So, the obvious question remains: why are British artists suing a British fashion house over graffiti on British buildings, in America? Perhaps they are hoping to land on a judge who interprets the Berne Convention — which enables infringement actions over foreign works in the United States — as requiring the court to decide copyright ownership under the law of the country that has the closest

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relationship to the work, in this case, UK law, and copyright infringement under the laws of the United States.[9] But that hope may be dashed by a judge who interprets the same convention as requiring both copyright ownership and infringement to be decided under United States law,[10] which, as discussed, may not protect illegal graffiti.

Regardless, even a judge whose interpretation of muddled precedent is colored by her appreciation for graffiti artistry might find that DISA, SNOK and RENNEE cannot enforce their claimed copyright against Vivienne Westwood.

First, as discussed in our introductory Passle post about this case, while these artists may pursue their copyright infringement claims under the Berne Convention without having registered their tags with the United States Copyright Office, they probably are not entitled to recover either statutory damages or attorneys' fees without registrations in the United States.

Second, Vivienne Westwood's use of images of DISA, SNOK and RENNEE's graffiti in a collage print on clothing may be fair use under the Copyright Act.[11] According to the Supreme Court's most recent (and hotly contested) interpretation of "fair use," regardless of how literally transformative the unauthorized use of copyrighted work may be, the larger the difference between the purpose or character of the use at issue and the original work, the "more likely the [analysis] weighs in favor of fair use."[12] "The smaller the difference, the less likely."[13] A court may find that

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the admitted difference between the purpose and character of DISA, SNOK, and RENNEE's graffiti and Vivienne Westwood's use of that work, is akin to the difference between Andy Warhol's paintings of the Campbell's soup can and Campbell's copyrighted logo, which the Supreme Court exemplified as fair use: just as Warhol's Soup Cans series is "an artistic commentary on consumerism," and the purpose of the copyrighted logo is "advertising soup,"[14] the goal of the artists' graffiti here is to "reference and harken back to their cultural origins, in which youths from marginalized groups spray-painted their

Why Are British Artists Suing a British Fashion House Over Graffiti on British Buildings, in America? *(continued)*

jax10289/Shutterstock.com

(coded) identities on subway cars or abandoned buildings, as a way of expressing to the world that they exist and matter," and Vivienne Westwood's goal is "to sell some clothing."[15] As such, Vivienne Westwood's incorporation of the graffiti may be fair use, regardless of how transformative it is to print a collage of graffiti pictures on pants for the sake of fashion.

Third, if DISA, SNOK and RENNEE's graffiti is in fact uncommissioned, a court may find that the artists lack standing to sue for copyright infringement because the only property right attached to the works would concern the tangible copies of the work owned by the owner of the buildings on which the graffiti is painted.[16] And without the benefit of copyright protection extended to commissioned murals on buildings,[17] the imagery on Vivienne Westwood's clothing may be evaluated as pictorial representations of architectural works located in or ordinarily visible from a public place, which are fair game under the Copyright Act.[18]

All this being said, DISA, SNOK and RENNEE may have a viable claim that their tags are copyright management information subject to the Digital Millennium Copyright Act (17 U.S.C. § 1202) — as other courts in the Central District have ruled in similar cases against fashion houses Moschino and Roberto Cavalli.[19] They might also have successful claims under the Lanham Act, and its state law counterpart, California unfair competition law (Cal. Bus. & Prof. Code §§ 17200 et seq.), given their allegation that their tags, like signatures and names, are recognized by members of the public as signaling their association or involvement.[20]

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- Under these statutes, they may be able to recover damages for their reputations being “diminished by a false association with an entity who has proven a continued pattern of deplorable disregard towards independent artists and street art.”[21]

It is hard to gauge, especially at this early stage of the litigation, whether DISA, SNOK and RENNEE will prevail. If the long string of similar lawsuits by street artists against fashion brands like Moschino, Roberto Cavalli, North Face and Puma are any indication, this case will likely settle out of court before a judge decides the extent of the artists’ rights.[22] Still, the case may open a Pandora’s box of unresolved legal questions and better define the legal landscape faced by foreign street artists pursuing copyright infringement in the United States. And that possibility is exciting enough to titillate seasoned intellectual property scholars and attorneys alike.

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1 *See Smith v. Vivienne Westwood, Inc.*, Case No. 2:25-cv-01221 (C.D. Cal. Filed 02/12/25).

2 *See id*, ECF No. 11, ¶ 3.

3 *Sherwin-Williams Co. v. City and County of San Francisco*, 857 F. Supp 1355, 1359 (N.D. Cal. 1994).

4 *In re Art & Architecture Books of the 21st Century*, Case No. 2:13-bk-14135-RK, 2023 Bankr. LEXIS 441, *136 (C.D. Cal. Bankr. Feb. 15, 2023).

5 *See* 17 U.S.C. § 102.

6 *Smith*, *supra* note 1, ECF No. 11, ¶ 1 and ¶ 4.

7 *See Flava Works, Inc. v. Gunter*, 689 F.3d 754, 756 (7th Cir. 2012).

8 Chelsea Kim, An Examination of Graffiti Protection and the Social Obligation Theory of Property, 36 Emory Int’l L. Rev. 539, 563 (2022).

9 *See Prod. Pit Ltd. v. Warner Bros. Ent. Inc.*, Case No. 2:24-cv-04286-AB-E, 2025 U.S. Dist. LEXIS 80484, *16 (C.D. Cal. Apr. 22, 2025) (citing Lahiri v. Universal Music & Video Distribution, Inc., 513 F. Supp. 2d 1172, 1176 n. 4 (C.D. Cal. Aug. 9, 2007)).

10 *See Court Warm v. Innermost LTD*, Case No. CV 21-4402-MWF, 2023 U.S. Dist. LEXIS 82232, *8 (C.D. Cal. Aprl. 13, 2023) (citing Hasbro v. Sparkle, 780 F.2d 189 (2d Cir. 1985)).

11 *See Blanch v. Koons*, 467 F. 3d 244, 246 (2nd Cir. 2006).

12 *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 598 U.S. 508, 529 (2023).

13 *Id.*

14 *Id.* at 539.

15 *Smith*, *supra* note 1, ECF No. 11, ¶¶ 19-20.

16 17 U.S.C. § 202.

17 *See Falkner v. GM, LLC*, 393 F. Supp. 3d 927, 930 (C.D. Cal. Sept. 17, 2018).

18 See 17 U.S.C. § 120(a); *see also Leicester v. Warner Brothers*, 232 F.3d 1212 (9th Cir. 2000).

19 *Tierney v. Moschino S.p.A.*, Case No. 2:15-cv-05900-SVW-PJW, 2016 U.S. Dist. LEXIS 195333, *13 (C.D. Cal. Jan. 13, 2016); *Williams v. Cavalli*, Case No. CV 14-06659-AB (JEMx), 2015 U.S. Dist. LEXIS 34722, *7 (C.D. Cal. Feb. 12, 2015).

20 *Id.*

21 *Smith*, *supra* note 1, ECF No. 11, ¶ 20.

22 *See* Louise Carron, Street Art: Is Copyright for “Loserstm”? A Comparative Perspective on the French and American Legal Approach to Street Art, N.Y. St. B.J. 34, 38 (2019); Britney Karim, The Right to Create Art in A World Owned by Others - Protecting Street Art and Graffiti Under Intellectual Property Law, 23 U.S.F. Intell. Prop. & Tech. L.J. 53, 70 (2019).W

Events

- **New York Katten Partners Attend 2025 *WWD* Women in Power Event**

  Karen Artz Ash, along with Intellectual Property Partner **Jessica Kraver** and Corporate Partner **Ilana Lubin**, attended *Women's Wear Daily*'s (*WWD*) 2025 Women in Power event on September 8. The event celebrated the release of this year's "Women in Power" list, which honors trailblazing women across fashion, beauty and retail who are shaping industries and driving global impact, selected for their leadership, creativity and influence by the *WWD* editors. Notable honorees and speakers included Martha Stewart, Bobbi Brown, Victoria Beckham and Coco Gauff.

- **Highlights From the 2025 ANA Masters of Advertising Law Conference**

  Katten attended the 2025 ANA Masters of Advertising Law Conference in Chicago from November 3-5. The conference highlighted how fast the advertising and consumer protection landscape is evolving. States are taking divergent approaches, artificial intelligence (AI) is reshaping production and compliance risk, and familiar areas like subscriptions, influencer marketing and loyalty programs remain enforcement priorities. *Read more about the themes that shaped this year's discussions*.

Save the Date

- **Katten's WLF Wellness Night**

  Wednesday, February 4
  New York

  Join Katten's Women's Leadership Forum (WLF) for a wellness-focused experience on Wednesday, February 4, at the Whitby Hotel in New York. The evening will feature insights from a longevity specialist, an interactive Bonsai Bar and a heart-healthy menu. In support of the American Heart Association, attendees are encouraged to wear red in recognition of National Wear Red Day to raise awareness about cardiovascular disease, one of the most significant health threats facing women.

Recognitions

- ***Chambers USA* 2025 Ranks Katten as Leading Law Firm**

  The 2025 edition of the *Chambers USA* guide ranked 100 Katten attorneys and named the firm as a leader in 42 practice areas. Individually recognized attorneys include Intellectual Property Partner and Advertising and Brand Litigation Co-Chair **Christopher Cole** in the category of Advertising: Litigation & Advertising: NAD Proceedings. Intellectual Property Partners and Trademark/Copyright/Privacy Group Co-Chairs **Karen Artz Ash** and **Floyd Mandell** were once again recognized in the category of Intellectual Property: Trademark, Copyright & Trade Secrets, and have now been joined by Intellectual Property Partner and Advertising and Brand Litigation Co-Chair **Kristin Achterhof**, Intellectual Property Counsel **Carolyn Passen** and Intellectual Property Associate **Julia Mazur** (also honored among "Associates to Watch").

- ***Best Law Firms®* 2026 Ranks Katten Nationally in Advertising Law**

  In the 2026 edition of *Best Law Firms®*, the firm was recognized in 30 nationwide and 66 regional rankings, with a total of 36 practice areas honored for excellence, innovation and client satisfaction, including Advertising Law. Katten was also chosen as "Law Firm of the Year" in Trademark Law.

  Additionally, Katten was regionally ranked in Advertising Law in Washington, DC.

- ***Managing Intellectual Property* Honors Katten and Multiple IP Stars in 2025 Rankings**

  Managing Intellectual Property (*Managing IP*) revealed its 2025 ranked attorneys and practices, naming several IP attorneys in Katten's Chicago, New York and Washington, DC, offices, as well as Katten among firms that "dominated their respective markets" in New York and Illinois.

  The 2025 "Trade Mark Stars" include **Kristin Achterhof**, **Karen Artz Ash** (who was also honored among the Top 250 Women in IP 2025), **Floyd Mandell** and Intellectual Property Partner **Bret Danow**.

NEWS to KNOW

- **Key Takeaways from Katten's ANA Panel on Advertising Risk**

  In this article, Intellectual Property Associate **Catherine O'Brien** provides highlights from Katten's panel at the 2025 ANA Masters of Advertising Law Conference, where **Kristin Achterhof** and **Christopher Cole**, joined by Michael Friedman of Whirlpool, led a discussion on the evolving risks facing advertisers and brands. Their session, "Is There Any Safe Campaign?," explored how enforcement priorities, litigation trends and reputational pressures are reshaping the false advertising landscape.

  The panel noted that the Federal Trade Commission's focus has narrowed under its current Republican leadership, emphasizing "kitchen table" issues and clear-cut fraud rather than close cases. Competitors and consumers have stepped into the gap, driving enforcement through Lanham Act challenges and a growing wave of class actions, particularly those involving alleged greenwashing and sustainability claims such as "eco-friendly," "natural" and "sustainable."

  Read the full article.

- **Are You Using 'Finfluencers': Practical Guidance for CFTC-Registered Derivatives Intermediaries and Exchanges**

  This article by Financial Markets and Regulation Partner and Co-Chair **Carl Kennedy** delves into "finfluencers" — social media influencers who promote and market financial services and products — and how they have emerged as powerful promoters and educators, capable of compressing complex concepts into viral short-form content. Carl noted that their reach into Gen Z and Millennial audiences is undeniable, but that their involvement in soliciting retail derivatives activity introduces regulatory and supervisory complexities that traditional frameworks did not anticipate.

  Finfluencers are now embedded in how retail audiences learn about and engage with derivatives, especially in crypto-referenced products and event markets. Intermediaries and exchanges can harness this channel, but only within a deliberately engineered framework that treats influencer content as regulated solicitation when the substance crosses that line.

  Read the full article.

- **Marketing Rule Under the Microscope: New SEC Exam Findings**

  In this article by Financial Markets and Funds Counsel **Adam Bolter** and Partners **Michael Didiuk** and **Richard Marshall**, the authors discuss key takeaways from a Risk Alert, issued on December 16 by the US Securities and Exchange Commission's (SEC's) Division of Examinations' staff, that highlighted additional observations on investment advisers' compliance with the amended Marketing Rule (Rule 206(4)-1) under the Investment Advisers Act of 1940 (Advisers Act). The Risk Alert focuses on the use of testimonials, endorsements and third-party ratings in advertisements.

  Read the full article.


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