

Focus on Fashion & Retail-May 2016

May 20, 2016

Publications

Surprise!?! DOJ Delays Web Accessibility Rulemaking (Yet Again)

By **Gonzalo E. Mon**

Website accessibility seems to be the Wild, Wild, West of the World Wide Web, and it is not going to get tamer anytime soon. Since July 2010, the DOJ has sought to issue a proposed rulemaking setting standards for website accessibility under the Americans with Disabilities Act ("ADA"). After numerous delays, we thought we had an end in sight [late last year](#) when the DOJ announced it would issue web accessibility regulations applicable to State and local government entities under Title II - as a precursor to Title III regulations that would apply to businesses.

New Balance Takes a Run at Trans-Pacific Partnership to Protect Investment in "Made in USA" Branding

By **Kristi L. Wolff**

Massachusetts-based New Balance has long made "Made in the USA" a cornerstone claim for their athletic wear. The graphic seen in this blog post, explains exactly what New Balance means by "Made in the USA" - but recently, the company has taken further steps to make clear the importance of this claim to their brand.

Class Actions Under New Jersey Warranty Law Threaten to Turn Terms-of-Service Boilerplate Into Big Potential Risks

Do your Terms of Service preclude litigants from claiming consequential damages or attorneys' fees? If new class action lawsuits in New Jersey are right, merely including these terms, and potentially many other disclaimers, violates New Jersey state law, and subjects you to a penalty of \$100 per sale.

Supreme Court Refuses to Review \$188M Class Action Verdict Against Wal-Mart Based Upon "Trial by Formula"

By **Barbara E. Hoey and James B. Saylor**

Wal-Mart may have felt the first aftershock of the Supreme Court's March 2016 opinion in *Tyson*

Foods, Inc. v. Bouaphakeo, which undercut overbroad interpretations of its landmark 2011 *Wal-Mart v. Dukes* decision and found that representative sampling of absent class members is not a *per se* improper method of establishing class-wide liability or damages.

FMLA Leave is Like a Hot Potato - Handle with Care or You Might Get Burned

By **Barbara E. Hoey**

Much has been written about the Second Circuit's recent decision finding that a Director of Human Resources at the Culinary Institute of America ("CIA") was **individually** liable as an "employer" for FMLA interference and retaliation. *Graziadio v. Culinary Institute of America, et al.*, No. 15-888-cv (2d Cir. Mar. 17, 2016). I agree this conclusion is noteworthy. However, the decision also reinstated the FMLA suit against the CIA, so it should send a loud message to all employers - not just HR directors - about how the conclusion of a FMLA leave should and should not be handled.

'Smart' Ways To Avoid FTC Internet of Things Scrutiny

By **Alysa Zeltzer Hutnik**

The *Law360* article, "'Smart' Ways To Avoid FTC Internet of Things Scrutiny," addresses recent enforcement matters and lessons learned from the FTC's report, "Internet of Things: Privacy and Security in a Connected World." We also provide a list of several key issues to consider when developing and marketing a connected or "smart" device.

New York Times Questions Value of "List Prices"

By **Gonzalo E. Mon**

In March, *The New York Times* ran an [article](#) on how the "list prices" displayed on many e-commerce sites have lost their meaning. The article starts with an example of a Le Creuset iron skillet. Although the author found the skillet on sale for \$200 on 20 websites, many of the sites advertised a "list price" or "suggested price" of as high as \$285. The \$200 selling price is good for consumers, but the author asks, "if everyone is getting a deal, is anyone really getting a deal?"

Don't Let Your Competitor Wear it Better: Protect Your Fashion Trade Secrets

By **David I. Zalman** The *Apparel Magazine* article, "Don't Let Your Competitor Wear it Better: Protect Your Fashion Trade Secrets," discusses the basics of what constitutes a trade secret and provides steps on how businesses can protect the value of their brands and related intellectual property from competitors, especially in the fashion and retail industries.

News

[Corporate Counsel Quotes Partner Gonzalo Mon on Retail Class Action Lawsuits](#)

[Law360 Features Partner David Evans on Amazon's Role in Staples, Office Depot Merger](#)

[Kelley Drye Expands Labor and Employment Practice in Los Angeles](#)

[Washington Lawyer Quotes Special Counsel Kristi L. Wolff on Wearable Fitness Devices and Privacy Issues](#)

Upcoming Events and Speeches

[What is the EEOC's Agenda? LGBT Rights in the Workplace](#)

May 25, 2016

Kelley Drye Webinar

Barbara E. Hoey and Mark A. Konkel

[2016 Advertising and Privacy Law Summit](#)

June 8, 2016

NEW YORK, NY

[Style Meets Sophistication: Legal Implications for Advertising Your Wearable Product](#)

Kelley Drye Seminar

July 20, 2016

SAN JOSE, CA

Wearables TechCon

Kristi L. Wolff

CONTACT

If the topics discussed here raise a legal question for you, please do not hesitate to contact us at infashion@kelleydrye.com for additional information. For more information on Kelley Drye's Fashion and Retail practice, please [click here](#).