

# LITIGATION DEPARTMENTS OF THE YEAR

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## CONSUMER CLASS ACTIONS



Joseph Duffy



Brian Jazaeri



Molly Lane



Donn Pickett



David Schrader



Charlene Shimada

## Morgan, Lewis & Bockius

Fashion is an industry where it pays to be on trend. But in 2015, clothing retailers faced a trend they weren't excited about: a wave of class actions aimed at outlet stores' pricing practices. Plaintiffs alleged that items at shops like Nordstrom Rack and Gap Factory were

advertised as being discounted when they had never actually been sold at the "original" price listed on the tag.

Morgan Lewis & Bockius's consumer class action team succeeded in rolling back a rack of the suits in 2015. In *Shaulis v. Nordstrom*, the firm's lawyers persuaded a Massachusetts

federal judge to dismiss a class complaint filed by a woman who said she wouldn't have paid \$49.97 for a cardigan at Nordstrom Rack if she'd known it had never actually sold for the "Compare At" price of \$218 listed on its tag. The team also won dismissal of another claim against Nordstrom in the

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Southern District of California, plus a similar claim against Gap Inc. in Los Angeles Superior Court.

Los Angeles-based partner Joseph Duffy, who worked on all of those cases, said the firm's strategy rests on knowing the details of its clients' business, from where they source products to how they advertise them.

"For class actions in which we've had a lot of success, we've been riding the trends in the law and in the industry for long before we've had the lawsuit," Duffy said. "We try to put the lawsuit into context."

As the string of outlet pricing claims has continued, Morgan Lewis has been able to tell new clients, including Guess Inc.,

that its lawyers have drafted many of the key motions and briefs in those cases.

"I think what's most challenging is that the litigation hasn't fully matured," Duffy said. "There isn't a lot of guidance from the courts on specific issues. At this point, both sides in the cases are left with some uncertainty."

The class action team at Morgan Lewis also defended Toyota at trial in a consumer safety suit contending its Smart Key System didn't meet federal safety standards. Morgan Lewis won.

And it persuaded Judge Beth Labson Freeman of the Northern District of California to dismiss all claims against Hewlett-Packard Co., which was accused of providing a shorter warranty

than promised for its computers, even after Freeman said at the start of the hearing that she thought plaintiff Maury Adkins probably had a case.

Morgan Lewis partner Donn Pickett, who led HP's defense team, said he saw Freeman becoming more engaged in the case as he drilled down on specific details of Adkins' claim during oral argument.

"A lot of people say that oral argument is usually irrelevant, but I prepare for it in a vigorous way," Pickett said.

Freeman initially gave Adkins 60 days to file an amended complaint. But a few weeks later, Adkins voluntarily dismissed his claims.

— Rebecca Cohen