

Retail & E-Commerce MVP: Morgan Lewis' Gregory Parks

By **Gavin Broady**

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Over the past year, Morgan Lewis & Bockius LLP partner Greg Parks has helped fend off high-risk consumer lawsuits against both brick-and-mortar mainstays like Toys 'R' Us and emerging online retailers like Gilt Group Inc., earning him a spot on Law360's roster of Retail and E-Commerce MVPs.

As co-chairman of Morgan Lewis' retail group, Parks helps guide a global team of 400-plus attorneys that make up a "one-stop shop" counseling hundreds of the nation's top retailers on data security issues, labor and employment litigation, consumer communication laws and anything else that might emerge on the retail horizon.

Parks has been at the helm of the firm's retail group for the last 12 years and describes himself as a "Morgan Lewis lifer," having joined the firm as a summer associate. He began his career focused on consumer class actions and privacy issues, fields that naturally led him to a specialization under the umbrella of retail law.

In May, Parks scored a big win for client Gilt Groupe, a popular online shopping site that faced a potentially costly putative national class action brought by consumers who alleged the site had breached Federal Trade Commission rules on advertising textiles derived from bamboo.

The dispute hinged on the validity of an arbitration clause Gilt sought to enforce, and Parks noted that while the U.S. Supreme Court's 2011 decision in *AT&T Mobility v. Concepcion* generally strengthened the ability to enforce arbitration clauses and class action waivers, the e-commerce world is still sorting out how that decision should apply to purchases made online.

"Whereas in *Concepcion*, you had a physical paper contract that made it easy to show the consumer had consented to an arbitration clause," he said. "That left some businesses on the e-commerce side scratching their heads because they don't have a signed contract, and their customers give consent to those clauses by placing their order."



Gregory Parks

Parks and his team focused the case on the membership agreement Gilt's customers must accept in order to access its services, an agreement that contains arbitration and class action provisions that the firm argued were subsequently reaffirmed each time a purchase is made.

The strategy was a success, and in May, the judge granted Morgan Lewis' motion to dismiss the class action.

"It was a pretty fierce battle because even though the plaintiff had agreed to arbitrate, their lawyers wanted to litigate in court," Parks said. "Fortunately, the court sided with us in recognizing that the modern e-commerce world is becoming an engine of our economy, and there has to be a way for arbitration agreements to be a part of that world."

Parks also recently steered longtime client Toys 'R' Us to a win in a California class action brought by plaintiffs seeking more than \$30 million in damages over allegations the company violated a 2007 state law requiring retailers to cash out gift cards with a balance of less than \$10.

The named plaintiff claimed she was refused a cash-out at a Toys 'R' Us store and alleged that the store was systematically refusing to comply with the law. Parks said those allegations were undercut by a significant body of evidence, including documented reminders sent to store branches stressing the importance of the policy, as well as transactional data showing the company had cashed out low-value gift cards on more than 55,000 occasions during the relevant period.

In light of this evidence, Parks said the settlement amount sought by the plaintiffs was unreasonable, and when negotiations stalled, the firm took the rare step of proceeding to trial. Morgan Lewis secured a win for Toys 'R' Us in the subsequent bench trial, and late last year, a state appellate court affirmed the ruling.

"Deciding to go to trial was a gutsy decision on Toys 'R' Us' part, and fortunately, the right side won," Parks said. "It was also a great victory for Morgan Lewis because very few law firms have tried class actions, and the idea that Morgan Lewis is ready to go to trial creates a more favorable settlement dynamic for us. I've seen firsthand that it has real benefits to our clients."

While Parks said it's important that the firm is ready and able to take a case all the way, an increasing part of his work has involved counseling retail clients on emerging issues on the horizon in the hopes of avoiding lawsuits in the first place.

Parks is responsible for initiating the firm's popular "Retail Did You Know" information alert system, which keeps clients abreast of new rules and regulations that impact their business, and he also leads the firm's annual retail roundtables.

The roundtable events bring together senior in-house lawyers from the nation's top retailers and facilitate information sharing about best practices and how to find solutions to the most pressing problems of the day. This year's roundtable was attended by representatives from Home Depot, McDonalds Corp., Walgreen Co., The Gap Inc., Macy's and others.

The events also allow Parks to keep a big-picture eye on the concerns facing the industry, from major ongoing concerns like labor disputes and data breach prevention to emerging "micro-trends" like the recent uptick in litigation over how retailers operate and advertise outlet or factory discount stores.

“It’s our goal to be a one-stop shop for retail clients, who have unique needs and face unique challenges,” Parks said. “Having open communication and listening to retailers talk about their challenges is critical to our practice, and it’s something our team prides itself on.”

--Editing by Christine Chun.

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