

Retail MVP: Sheppard Mullin's Craig Cardon

By Kali Hayes

Law360, New York (November 16, 2015, 1:59 PM ET) -- Representing dozens of household retail names has given Sheppard Mullin Richter & Hampton LLP's Craig Cardon insight into the legal challenges the industry faces, but perhaps more importantly, he's helped retailers draw clear lines about what data they can collect from customers, earning him a spot on Law360's 2015 list of retail MVPs.

As a co-chair of Sheppard Mullin's privacy and data security group, Cardon has become the firm's go-to resource for issues spanning the entire ecosystem of data compliance for industry giants such as Kate Spade, Levi Strauss & Co., Safeway, Williams-Sonoma, Match.com and Adidas, to name a few. He provides clients with strategy for compliance by design to standard compliance, data breach responses and, of course, privacy-related class actions.

One of the cases that Cardon is "particularly proud of" from the past year is *Stacie Harrold v. Levi Strauss & Co.* In that case he secured a denial of certification for a proposed class of customers accusing the famed denim company of violating the Song-Beverly Credit Card Act by requesting email addresses during credit card purchases.

"This is the one that really defined how you can be collecting information at a retail location in California, but the rest of the country follows California's lead in this, oftentimes," Cardon said. "It provides a framework for retailers to say OK, now I know how to do this, and [it's] almost a safe harbor because we know exactly what we can do and we know the rules to apply."

The state's Supreme Court refused to reconsider a similar case in August, saying that the Levi Strauss decision had already stated that retailers can request a customer's personal information, a move that left Cardon feeling he had helped move Song-Beverly along into the 21st century.

Another 2015 case that Cardon believes helped bring data and privacy laws closer to the modern needs of his clients and consumers alike was one involving Irvine, California-based surf and sportswear retailer Tilly's and the newer trend of requesting a customer's email address for purposes of emailing a receipt.

MVP



Craig Cardon

Sheppard Mullin

Cardon won a victory for Tilly's in the case when a California court ruled that requesting a customer's email address in order to send a possibly more convenient receipt was an exception under privacy statutes.

"There had been no case that said all of these data collection laws don't apply to a request for an e-receipt and the Tilly's case was the ... first decision I'm aware of anywhere that had said everyone who is doing this the right way and asking for an email for purposes of sending an e-receipt, you're cool," Cardon said. "[Now] you don't have to worry that suddenly, by keeping up with everyone else and doing the logical thing that consumers want, you're going to get hit with some exorbitant penalty."

Seeing that his work is helping the law evolve in a significant way is one of the main pleasures that Cardon gets out of his work. But representing outdoor gear product companies such as Columbia Sportswear, Mountain Hardwear and Patagonia is particularly enjoyable for Cardon, given the time he spent in his 20s as an "itinerant" mountain climber.

"When I get to work with those people and I say, you know, 20 years ago you saved me from frostbite, it kind of brings it all full circle."

Although Cardon spent his first years in law, where he started as a paralegal, splitting his time between an office in California and a snowy peak somewhere, he was drawn into some high-profile cases early on, including the first ever case on Court TV and the Racketeer Influenced and Corrupt Organizations Act case against Imelda Marcos in New York.

His focus on retail and e-commerce however, was sealed in the late '90s when, as a young midlevel associate, he drafted the first privacy policy for Pottery Barn's then-brand-new idea of selling furniture online.

"I remember everyone saying maybe someone will buy something online, but certainly not a sofa," Cardon said. "Now the concern is retail locations being turned into, essentially, showrooms for online shopping."

Heading into the new year, Cardon expects to keep busy with advising his retail clients in data and privacy compliance, but he expects the "new wave" of false advertising cases surrounding discount and outlet retailers only to increase.

"We're seeing this all the time [and] the courts are starting to establish what the rules are and where the safe harbors will be and that's something I'm working on a lot these days," Cardon said. "Everyone in the industry is concerned about them because, just the volume of the cases that are being filed."

--Editing by Stephen Berg.

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