



## → Theodore C. Max

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Theodore C. Max is a partner in the Entertainment, Technology and Advertising and Intellectual Property Practice Groups in the New York office.

### Areas of Practice

Theodore focuses on counseling clients on intellectual property issues and litigation. He is leader of the firm's Fashion and Apparel team. Theodore combines his skill and experience as a trial attorney with his knowledge of copyright, trademark and intellectual property law in servicing the firm's diverse clientele.

Theodore has counseled clients on and litigated numerous cases involving issues on the cutting edge of copyright and trademark law. He has assisted clients in identifying, protecting and preserving their intellectual property assets, including seeking registration of rights in the United States and internationally and taking action against infringements of copyrights, trademarks and trade dress. He also has experience developing and implementing anti-counterfeiting programs and pursuing civil and criminal enforcement remedies. Theodore has actively litigated intellectual property issues, as well as licensing and franchise disputes, and the rights of publicity and privacy. He successfully has represented clients in all types of civil litigation, including alternate dispute resolution proceedings and mediation, trials and appeals.

### Honors

Copyright Law, Best Lawyers in America, *Best Lawyers*, 2020-2022  
Leading Trademark Professional, *World Trademark Review*, 2015-2019  
Intellectual Property Star, *Managing Intellectual Property*, 2015-2020  
Intellectual Property, Media and Advertising, *Legal 500*, 2013-2019  
New York Super Lawyer - Intellectual Property Litigation, *Super Lawyers*, 2008-2020  
Named as one of the "Legal Elite Litigation List," *Avenue Magazine*, 2011-2012

### Articles

Mr. Max has lectured widely and authored numerous publications.

"FTC Disclosure Guide Signals More Influencer Scrutiny," *Law360*, December 12, 2019

Digital Marketing: Native Advertising and Online Influencers in the Hospitality Industry, *Hotel Business Review*

"Advertising on the Cutting Edge," *The Metropolitan Corporate Counsel*, October 2016

Authored a chapter in the book, *Fashion Law: A Guide for Designers, Fashion Executives & Attorneys*, which is entitled "Celebrities and Fashion Models: Endorsement and Promotion Agreements."

"Coloring Outside the Lines in the Names of Aesthetic Functionality: Qualitex, Louboutin, and How the Second Circuit Saved Color Marks for Fashion," *The Trademark Reporter*, September/October 2012

"Litigating Trademark And Copyright Cases In The Metaverse," *The Metropolitan Corporate Counsel*, January 25, 2012

"Tweet Me! - The Southern District of New York Answers Copyright Questions Raised by Twitter and Twitpuc Use," Terralex's *Intellectual Property Newsletter*, September 2011

"Congress Has Designs For Piracy Prevention Legislation," *Daily Journal*, August 9, 2011

"Charting A Safe Course In The Perfect Storm Of Consumer Privacy Laws," *The Metropolitan Corporate Counsel*, June 2011

Authored a chapter in the book, "*Inside the Minds: New Developments in Evidentiary Law in New York, 2011 ed.*," *Aspatore Publishing*, April 2011.

"Trademarks in the Veldt: Do Virtual Lawyers Dream of Electric Trademarks?" *The Trademark Reporter: The Law Journal of the International Trademark Association*, Vol. 101, No. 1, January-February, 2011.

Project Runway: The Am Law Daily Edition, *The AmLaw Daily*, February 19, 2009

House Okays Watered Down PRO IP Act, *World Law Media*, June 1, 2008

Designer Hotels Are In Fashion: But Care Should Be Taken To Avoid A Major Faux Pas, *Hotel Executive.Com*, May 1, 2008

When Copyright and Trademark Infringement Goes Online, *New York Law Journal*, October 29, 2007

When Keywords Trigger Sponsored Links, Be Mindful of WhenU and the Split in the Circuits Before Choosing Your Forum Court, *Bloomberg Law Reports*, September 10, 2007

Authored a chapter in the book, *Intellectual Property Assets in Mergers and Acquisitions*, which is entitled "Acquisitions and Licensing of Famous Name Trademarks and Rights of Publicity in the United States."

Authored a chapter in the book, *Handbook of Fashion Rights*, which is entitled "Intellectual Property Protection and Fashion in the United States."

"Total Recall: A Primer on a Drastic Form of Equitable Relief," published in *The Trademark Reporter*®, in May-June 1994

"Dilution Act May Limit Commercial Parodies," published in *The National Law Journal*

Contributed a chapter in the book, *The New Role of Intellectual Property in Commercial Transactions*, entitled "Available Remedies For Dispute Resolution in International and Domestic Trademark Licenses."

## **Covering Your Ads Blog Posts**

- "FTC Cracks Down On Deceptive Social Media Campaign By Teami LLC," May 13, 2020
- "FTC'S New "Disclosures 101" Publication And Video Is A Shout Out To Influencers," November 8, 2019
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"'Good Genes?': Maybe Not. FTC Takes Action Against Sunday Riley and Sunday Riley Modern Skincare, LLC For Employees False Reviews," November 4, 2019

## Fashion & Apparel Law Blog Posts

- "Seeking to Stop Deceptive 'MADE IN USA' Claims, the FTC Takes Action Against Brandnexus," May 14, 2021
- "No Future for Fur in the Golden State?" October 8, 2019
- "See You Later Alligator? After A While Crocodile? Will Penal Law 653o(b)(1) Take Effect?" October 8, 2019
- "FTC Swats Public Relations Firm and Publisher for Misleading Olympic-Themed Mosquito Repellent Product Endorsements and Native Advertisements," December 6, 2018
- "Kim Kardashian West Won the First CFDA Influencer Award: Will A CGI Supermodel Be Next?" August 1, 2018
- "Do We Need A Truth In Advertising Act? The Industry and Retailers Self-Regulate Photoshopping Ads," February 20, 2018
- "Brands Beware!!!! FTC Scrutinizing Influencer Posts for Compliance with Endorsement Guides," April 21, 2017
- "'Oh Yes [the Court] Did' – District Court Grants Motion to Dismiss ADA Complaint Until the DOJ Issues Implementing Regulations and Renders Technical Assistance," March, 31, 2017
- "Who's Got the Spirit?! Supreme Court Decides Star Athletic, LLC v. Varsity Brands, Inc.; New Two-Part Test Seeks to Clear Up the 'Mess' But Questions Still Remain About the Subjective Nature of the Separability Analysis," March 27, 2017
- "FTC Requires that iSpring's 'Built in USA' Claims Hold Water," February 10, 2017
- "FTC Grants Summary Judgment Against California Naturel, Inc. Falsely Advertising 'Sun Blocked' Sunscreen Products," December 29, 2016
- "Rah! Rah! Sis Boom Bah! Supreme Court to Decide Whether Copyright Act Protects Cheerleader Uniform Designs," May 5, 2016
- "Climate Change Gets Fashionable: The Fashion Industry Embraces The President's Climate Change Initiative," December 22, 2015
- "Will The FTC Issue Native Advertising Guidelines in 2015?" May 18, 2015
- "There's No Such Thing As a Free Sample," May 18, 2015
- "Trending Information: The Connection Between Data Brokers and the Fashion Industry," July 24, 2014
- "International Safe Harbor Privacy Compliance: What You Need to Know," July 14, 2014
- "Too Good To Be True: FTC's Crackdown On L'Occitane's Body Slimming Almond Extracts," July 11, 2014
- "Fur Flies and West Hollywood ("WeHo") Fur Ban Is Upheld By Federal Court," July 3, 2014
- "New Updated FTC Care Labeling Rules: 'Do's and Don'ts,'" June 26, 2014
- "Second Circuit Digs Its Heels Into *Louboutin* Dispute; Finds "Red Sole" Trademark Protectable, But Limited in Scope," September 19, 2012

## Intellectual Property Law Blog Posts

- "The Innovative Design Protection and Privacy Prevention Act: Will Design Protection Be In Vogue in Congress?" September 1, 2010
- "What Is the Jurisdictional Pre-Requisite for Copyright Litigation?" July 14, 2009
- "Joseph Abboud Is Back: Personal Name Trademark Controversy Continues," July 13, 2009

- "Second Circuit Resolves Split Between the Circuits Regarding Sale of Keywords to Trigger Sponsored Links and "Use in Commerce" Under the Lanham Act," April 10, 2009
- "Gibson's Patent Action Against Activision Hits Wrong Chord With Court In "Guitar Hero" Dispute: Summary Judgment Granted," April 10, 2009
- "S.D.N.Y Holds eBay Not Liable in Closely Watched Trademark Case," July 14, 2008

## Social Media Law Update Blog Posts

- "3M Takes Action to Protect Its Brand from Price Gouging And Trademark Infringement," May 5, 2020
- M November 16, 2010

## Books

The Business and Law of Fashion and Retail: Trademark: Chapter 5  
07.01.2020

International Comparative Legal Guide to: Copyright 2017: Chapter 1  
10.2016

The International Comparative Legal Guide to: Copyright 2016 (2nd ed.): Chapter 30- U.S.A.  
12.2015

## Media Mentions

'Detox' Tea Marketer Settles FTC Lawsuit Over False Promises  
*Healthline*, 03.11.2020

In Network: Ted Max  
10.18.2018

## Speaking Engagements

"Advertising and Promotion in the 21st Century Global Market." Brands and Fashion Conference, March 22-23, 2017

"Designing a Greater System of Protection for Fashion: The Future of Fashion Law," New York University School of Law, February 19, 2015

"Hot Topics for 2013: What You Need to Know to Avoid Fashion Jeopardy?" New York, February 13, 2013

"IP Enforcement and Litigation 2011: Civil and Criminal Update" Practising Law Institute, March 30, 2011

## Events

U.S. Mexico Fashion Industry: Dressing Up with Innovation & Evolution in North America  
Join Sheppard Mullin and The United States - Mexico Chamber of Commerce for the U.S. - Mexico Fashion Industry Commerce Conference

Sheppard Mullin New York, 02.27.2020

Retail on the Brink: Crisis Management and Communications  
You Will Participate In A Day-By-Day Week of Crisis Befalling A Retail Company  
Sheppard Mullin New York, 11.19.2019

Advertising and Social Media: Understanding the Legal Implications  
French American Chamber of Commerce Webinar  
11.19.2019

Webinar: Advertising on the Cutting Edge: Social Media, Influencers and Native Advertising  
04.25.2019

The Digital Economy: What you need to Know to Compete  
Sheppard Mullin New York, 10.18.2018

Retail Compliance Bootcamp and Interactive Breakouts: Avoiding The Retail Apocalypse  
12.14.2017

Model Behavior – A Primer on How to Draft & Negotiate Agreements With Models & Influencers  
Via Webinar, 07.20.2017

Social Media Branding and Advertising and the Future of Luxury  
Third Thursday Emerging Company Webinar Series  
via WebEx, 11.17.2016

Retail in Flux  
What You Need to Know About Brexit, the Changing Legal Landscape Regarding Privacy and Data Protection,  
and US-UK Tools for Online IP Enforcement  
09.14.2016

Retail's Tectonic Digital Disruption: What Every Retailer Needs to Know to Survive and Compete  
Sheppard Mullin New York, 06.15.2016

Brilliant! Fashion Advice from the Bespoke Brief - CLE Program  
A Day in the Life of an In-House Fashionista: "Fashion Beat the Clock"  
11.04.2015

Accommodating Disabilities with Acumen, Protecting Data with Diligence, and Avoiding Class Actions with Class  
Retail Best Practices  
09.29.2015

Brand Protection and the Future of Luxury  
Third Thursday Emerging Company Webinar Series  
via WebEx, 07.16.2015

ACC-GNY Seminar  
Retail Practice Group CLE: Best Practices for Retail Counsel  
04.29.2015

Facing a Blizzard of Legal Challenges as In-House Counsel  
Spring 2015 New York Fashion Week  
02.17.2015

How to Protect Your Brand  
Third Thursday Emerging Company Webinar Series  
via WebEx, 08.21.2014

Crisis Management in the Fashion and Retail Industry  
Sheppard Mullin's Fashion Week Seminar  
02.18.2014

It's All About the Brand!  
New York Fashion Week Seminar - Fall 2013  
09.12.2013

Branding Your Company in the World of Social Media, Instant Celebrity and Virtual Reality  
Third Thursday Emerging Company Webinar Series  
via WebEx, 07.18.2013

Breakfast With Your Finance and Bankruptcy Lawyers  
Intellectual Property Issues in Bankruptcy: Assumption and Assignment, Distinctions Between Patents,  
Copyrights and Trademarks, Distressed Acquisitions and How to Protect Your IP  
Sheppard Mullin New York, 06.11.2013

How to Legally Protect Your Brand  
Third Thursday Emerging Company Webinar  
WebEx, 11.17.2011

Got GOTS?  
Sheppard Mullin, New York, 06.28.2011

How to Legally Protect Your Brand in the New Millennium  
Third Thursday Emerging Company Webinars  
WebEx, 10.21.2010

Digital Media Law Forum: Building Brands In a Digital World  
Silicon Valley Bank, 3005 Tasman Dr, Santa Clara, CA 95054, 09.22.2010

## Memberships

Amicus Committee, International Trademark Association

Past Chair, Publications Committee, International Trademark Association

Past Editor-in-Chief, The Trademark Reporter®, 1999-2001

Previous United States Original Articles Editor

Previous International Original Articles Editor

SubCommittee Chair, "International Annual Review of Developments in Trademark Law and Practice," The Trademark Reporter®

## Practices

Entertainment and Digital Media

Intellectual Property

Litigation

ESG and Sustainability

France

## Industries

Emerging Company & Venture Capital

Esports & Games

Fashion, Apparel and Beauty

Hospitality

Retail

## Education

J.D., New York University School of Law, 1983, Editor-in-Chief, *New York University Review of Law and Social Change*, Won NYU Moot Court Competition, *Mendes Herschmann Prize*

B.A., Hobart College, 1980, *summa cum laude*, *high honors*, *Rhodes Scholar Finalist*, *Student Trustee*

## Admissions

New York