

MVP: Morgan Lewis' Joseph Duffy

By Hailey Konnath

Law360 (November 25, 2019, 4:55 PM EST) -- Joseph Duffy of Morgan Lewis & Bockius LLP helped Gap Inc. and other retailers defeat several class actions accusing them of advertising misleading prices, and secured a complete victory for Walgreens and Rite Aid in a pair of putative class actions in the California Supreme Court, earning him a spot among Law360's 2019 Retail & E-Commerce MVPs.

HIS BIGGEST ACCOMPLISHMENT OF THE PAST YEAR:

Duffy said he's worked on a series of class actions involving allegations of improper price comparisons. Morgan Lewis has had a lot of success defeating some of these cases at the motion-to-dismiss stage, he said, and has been able to obtain favorable settlements for others.

In particular, Duffy helped Gap defeat a suit filed in March by consumers who claimed the retail giant's in-store signs violate Ohio consumer protection law.

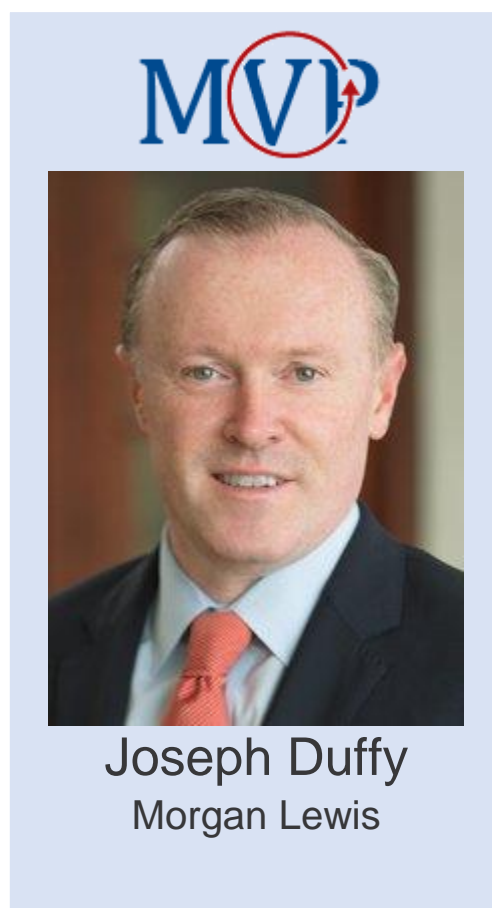
"These are pretty significant cases for retail clients because the pricing issues are things that affect all their sales and so the plaintiffs seek extraordinarily high damages," Duffy said. "So finding a way to resolve those cases quickly and efficiently is something we've been very proud of."

HIS BIGGEST CHALLENGE OF THE PAST YEAR:

Duffy said he's been helping retailers prepare for the Golden State's new privacy law, the California Consumer Privacy Act, which will tighten regulations for online businesses and brick-and-mortar stores when it takes effect January 2020.

"While litigation hasn't commenced yet, this act affects any retailer that does business in California, whether in stores or online," he said.

And while his practice is focused mainly on litigation, Duffy said he does a lot of counseling, too, so he



and his colleagues have "spent a lot of time this year talking to clients about privacy issues generally, but specifically how to be prepared for the [law] when it goes into effect in 2020."

HIS PROUDEST MOMENT THIS YEAR:

In February, Duffy and his team persuaded a Nevada federal court to toss a "highly contested" Telephone Consumer Protection Act class action that implicated Le Vian, a jewelry manufacturer, in a suit against MJ Christensen Diamonds, which was accused of making automated calls inviting consumers to a trunk show featuring Le Vian jewelry.

The plaintiffs had claimed Le Vian was also liable because its jewelry was featured at the show. The class, which won certification, was seeking "extraordinarily high damages" under the TCPA, Duffy said, making summary judgment a very "critical moment in the case."

Ultimately, the court held that Le Vian wasn't liable because there was no principal relationship between it and that retailer.

"We were able to prevail on an area of law that isn't fully developed — whether there can be vicarious liability and how it's established in TCPA cases," Duffy said.

It's an issue many of his retail clients face, so "getting it right and getting a victory was great" for Le Vian, he said, but also important for the industry in general.

"We were very proud to get that result," Duffy said.

WHAT MOTIVATES HIM:

As Duffy's practice has expanded to include counseling in addition to litigation, he said he enjoys helping retail clients make decisions about their operations — "such as advertising, pricing, use of social media, changes to their e-commerce platforms."

"Being involved in helping to develop and expand and improve a business in addition to handling the litigation has been very rewarding and inspiring — to be part of helping build something as opposed to simply just doing the litigation when conflict arises," he said.

HIS ADVICE FOR JUNIOR ATTORNEYS:

Duffy said it's critical that new attorneys first "develop the basic skills and do them very well."

They should learn their clients and their clients' industries thoroughly, he said.

"When I understand how a retail company works, I can be a much more effective retail litigator," Duffy said. "I can also anticipate issues where the litigation needs and business needs might have some tension and provide advice on how to avoid litigation in the future."

— *As told to Hailey Konnath*

Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2019 MVP winners after reviewing nearly 900 submissions.