Panel: Think Twice About Litigation

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Fashion firms seeking to curtail legal costs might want to think twice about unnecessary litigation, while those looking to make an acquisition shouldn't shy away from distressed brands.

Those were the key messages from presenters at a panel discussion entitled "R Is for Recession (& Recovery): Strategies for Surviving the Downturn While Preparing for the Upturn," hosted by the law firm Cowan, Liebowitz & Latman at New York's Harvard Club last week.

Joel Karni Schmidt, a partner in the firm's intellectual property group, compared the court battle Abercrombie & Fitch Co.'s Ruehl brand recently endured with Levi Strauss & Co. over a trademark dispute regarding pocket stitching on jeans and Diane von Furstenberg Studio's more recent settlement of infringement claims by Canadian design firm Mercy.

Abercrombie's eventual victory came at a substantial cost due to the accumulation of lawyers' fees, as well as required consumer confusion surveys. DVF, on the other hand, elected to settle the dispute and avoided the courts altogether.

"Even though Abercrombie & Fitch won that case, which they litigated vigorously, they're closing their Ruehl stores," Schmidt said. "It just goes to show how unnecessary litigation affects your bottom line."

Schmidt advised exploring mediation and arbitration as alternative options to litigation.

Attendees, mostly lawyers, designers and fashion executives, also heard from the firm's specialist on regulatory compliance on new Customs requirements and from partner Arlana Cohen, a trademark litigation specialist, who told fashion companies to look at their brand portfolios and "trim the fat."

"Look for ways to keep what you have and ditch what you don't need," Cohen said. "Not only to cut costs but to give yourself time to focus on the things that matter."

Richard Kestenbaum, co-founder and partner at investment banking firm Triangle Capital LLC, called the current mergers and acquisitions environment "stormy," but told attendees to be careful of "missing an opportunity because the first look isn't pretty."

He explained firms on the prowl for a good buy need to remember sometimes the "best opportunities are hidden by a mess," which often plagues distressed brands.

"The good opportunities that also look good are rare and command a premium," he said.

Kestenbaum told attendees to sift through the messy situations to find the hidden gems. He implored them to talk to management, as well as employees and anyone who does business with the company, to get information and discover what caused any problems and what hidden opportunities might exist. Opportunities include not just ways to realign or expand the business, but seeking out others who might be good investing partners.

"Take advantage of the weaknesses. Good companies sometimes run out of money and can't get financing. If you can find the counterparty with cash [to buy or invest], then you are in a good spot," he noted.

He told attendees to ignore those who say the sky is falling. "This is the period when you may find the greatest opportunity of a lifetime," Kestenbaum concluded.

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