



## Merrit M. Jones

Counsel San Francisco

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Merrit Jones is an experienced commercial litigator who provides litigation defense and compliance counseling in a broad range of legal matters, including defense of consumer false advertising class actions, consumer product regulatory compliance and liability, consumer privacy and data security, intellectual property, the ADA and website accessibility, California Proposition 65, advertising and marketing laws and guidelines, e-commerce and website compliance, and contract

matters. Merrit is the editor of BCLP's [Retail Law](#) blog.

**Consumer Products:** Act as in-house outside counsel for a national retailer, including holding office hours to provide them a wide range of consumer product regulatory, advertising, and product safety matters. Advise and defend clients in a variety of product liability and regulatory compliance matters, including compliance with federal laws and regulations enforced by the Consumer Product Safety Commission, the Federal Trade Commission, Customs and Border Protection, the Environmental Protection Agency, and state laws and regulations. Advised clients on packaging and labeling requirements, including compliance with the Fair Packaging and Labeling Act, country of origin labeling, labeling of clothing and textiles, "Made in U.S.A." regulations, and state laws concerning toxics in packaging and products.

**Food Products:** Assisted food manufacturers and retailers in complying with food product safety standards, including the Food Drug & Cosmetic Act, the Food Safety Modernization Act, and in particular the Food Safety Verification Program. Advised manufacturers and retailers on product packaging and labeling requirements, including compliance with the Nutrition and Education

## Practices

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Class Actions and Mass Torts  
Class Actions  
Business & Commercial Disputes  
Technology & IP Disputes  
Mass Torts & Product Liability  
Marketing & Advertising (Co-Leader)  
Media & First Amendment  
Regulation, Compliance & Advisory  
Food & Ag Disputes  
Litigation & Dispute Resolution  
Food & Agribusiness  
Retail & Consumer Products

## Admissions

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California, 2000  
United States District Courts for the Central, Eastern, Northern, and Southern Districts of California

## Education

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University of California-Hastings, J.D., 2000  
Northwestern University, B.S., 1993

Labeling Act of 1990 and other FDA labeling requirements, including labeling of artificial colors and additives; and USDA National Organic Program and non-GMO labeling requirements.

**Advertising and Marketing:** Experience litigating and providing compliance advice concerning FTC regulations, state statutes and industry guidelines regarding false and deceptive advertising and marketing, including sale price advertising, product comparison advertising, children's advertising, use of native advertising, social media, endorsements and testimonials, product placement, and style bloggers, and using a variety of mediums, including print and broadcast ads, telemarketing, direct advertising, email, and SMS text message marketing. Also advised clients concerning collection of consumer information in connection with loyalty programs, offering of gift cards, and promotional offers, sweepstakes and lotteries.

**Intellectual Property:** Defended retailers and manufacturers in numerous copyright, trademark and design patent infringement claims. Advises retailer clients concerning protection of their trademark rights by monitoring potentially infringing trademark registration applications, and providing advice and litigation of enforcement actions. At the product development stage, reduces the risk of future litigation by advising merchants concerning potentially infringing use of copyrightable works, trademarks and design patents.

**Ecommerce:** Advised clients concerning a variety of e-commerce matters, from website accessibility under the ADA to drafting website privacy policies and statements concerning compliance with California's Transparency in Supply Chains Act.

**Privacy:** Defended and provided compliance advice concerning a broad range of consumer privacy issues, including compliance with the Children's Online Privacy Protection Act of 1998 (COPPA), the Fair and Accurate Credit Transactions Act of

2003 (FACTA), the California Online Privacy Protection Act (COPPA), the Fair Credit Reporting Act (FCRA), state privacy and data breach laws, and FTC and state law enforcement precedent. Most recently, advised retailers and manufacturers concerning compliance with the California Consumer Privacy Act (CCPA), including updating their privacy policies and reconciling their loyalty programs with the CCPA.

**ADA:** Defended numerous cases under Title III of the Americans With Disabilities Act (ADA) involving premises, service animals, and websites. Advised clients on compliance with ADA Accessibility Guidelines, including establishing a program for a national retailer to obtain California Certified Access Specialist (CASp) certification of ADA compliance for its stores. Defended numerous website accessibility claims, and has substantial experience both in defending legal actions and in advising clients concerning compliance with the Website Content Accessibility Guidelines (WCAG) 2.0, level AA.

**California Proposition 65:** Represented retailers, distributors and manufacturers in Proposition 65 matters involving a broad range of chemicals and consumer products, including personal care products, food and beverage products, furniture and housewares, fashion apparel and accessories, appliances, tools and construction materials. Regularly advises clients concerning newly listed chemicals, and changes in chemical exposure limits, test protocols, warning requirements, and enforcement trends. From the time that a business receives a 60-day notice of violation, she works through the process of evaluating the risk, determining whether removal from sale, reformulation or warning is necessary, negotiating either a dismissal or reasonable settlement with the enforcement group, or litigating the applicable safe harbor level and exposure levels. Advises businesses entering into either upstream or downstream supply contracts to negotiate the allocation of Proposition 65 risk, and ensures that their contracts contain appropriate indemnity and warranty provisions.

Prior to law school, Merrit was a newspaper reporter and editor for Gannett Newspapers.

## **Professional Affiliations**

- American Bar Association
- California Bar Association
- California Retailers Association

# Representative Experience

- Successfully defended national retailer in putative class action filed in Western District of Washington alleging labeling of “Kona” coffee is false and misleading due to insufficient amounts of Kona beans. Successfully brought motion to dismiss claim for violation of Section 43(a)(1)(A) of Lanham Act on behalf of retailer defendants.
- Successfully defended national nutraceutical manufacturer in actions filed in Northern District of California and Los Angeles County Superior Court in putative class actions asserting violation of CLRA and UCL based on allegation that labeling of biotin products is false and misleading. Defeated motion for class certification.
- Successfully defended international manufacturer of butter products in putative false advertising class action in Southern District of California asserting violation of CLRA, UCL, and false advertising based on labeling of butter products as “Made With Milk From Grass-Fed Cows.” Brought successful motion to dismiss.
- Successfully defended manufacturer of kinesiology tape in putative class action asserting violation of CLRA, UCL and false advertising based on allegation that labeling of products with claims such as “Pain Stops Here” is false and misleading. Obtained dismissal at pleading stage.
- Successfully defended national pasta manufacturer against claims that packaging of pasta products creates false perception that pasta is manufactured in Italy.
- Represented national manufacturers and retailers against numerous claims based on labeling and marketing of food products as “Natural,” “No Artificial Preservatives,” “Non-GMO,” “Organic,” environmental claims, and sourcing claims.

- Successfully represented national retailer and manufacturers in putative class action claims alleging violation of CLRA, UCL, and California and federal anti-slack fill laws.
- Represented retailers in class action litigation in alleging violation of the Fair and Accurate Credit Transactions Act (FACTA) and successfully defeated plaintiffs' class certification motion.
- Represented retailers in California class actions alleging violations of consumer protection statutes including California Civil Code § 1747.08 relating to collection of personal identification information in connection with credit card transactions.
- Represented numerous businesses in Title III ADA premises, service animal, and website accessibility cases, and provided compliance counseling.
- Represented retailers and manufacturers in numerous cases alleging violation of California Proposition 65, and advised businesses concerning compliance with Proposition 65's warning requirements, chemical exposure limits, and product reformulation.
- Represented retailers and manufacturers in numerous copyright, trademark and patent infringement matters.
- Represented national manufacturers and retailers in separate putative class actions alleging false and deceptive advertising, violation of California's Consumer Legal Remedies Act and Unfair Competition Law based on labeling and marketing of nutraceutical products as providing health benefits; food products as being "Natural," "All Natural," or "Made With Natural Ingredients"; and consumer products as being "Made in USA."
- Litigated false advertising and unfair competition complaint against a national retailer of wine and beverages.

## **Publications**

- “FDA Provides Guidance for New Nutrition and Supplement Facts Labels, November 9, 2018
- “DOJ Says Online Businesses Have ‘Flexibility’ in How to Make Websites Accessible,” October 12, 2018
- “California Passes Amendments to Consumer Privacy Act,” October 4, 2018
- “Coffee Defendants Likely Seek to Seek Stay of Prop. 65 Action Following OEHHA’s Proposal to Exempt Coffee From Cancer Warning Requirement,” July 3, 2018
- “Eleventh Circuit Holds Prior Settlement Does Not Render New Website Accessibility Case Moot,” June 25, 2018
- “WARNING: New Proposition 65 Warning Requirements Take Effect August 30, 2015,” June 14, 2018
- “Website Accessibility Guidelines Get Update; California Court Limits Penalties to One Visit,” June 7, 2018
- “FDA Extends Date for Compliance With New Nutrition Facts Label; Menu Labeling Rules Take Effect,” May 17, 2018
- “FTC Warns Against Warranty Conditions That Violate Magnuson-Moss Warranty Act,” April 13, 2018
- “Eleventh Circuit to Consider Whether Prior Settlement Moots Website Accessibility Case,” March 30, 2018
- “Washington Bans PFAs in Food Packaging,” March 27, 2018
- “California Considers Regulating Food Packaging Under Green Chemistry Initiative,” March 23, 2018
- “Beware of Phantom Price Markdowns: Ruling Against Hobby Lobby Highlights Risk,” February 16, 2018



- “A New Year for Online Businesses: DOJ Ends 2017 by Withdrawing Website Accessibility Rulemaking,” January 8, 2018
- “Online Retailers Support Challenges to Repeal of Net Neutrality Rules,” December 15, 2017
- “Online Retailers Beware: Court Holds Website Violates ADA Despite Lack of Physical Store,” November 21, 2017
- “California Proposition 65 Actions Expected to Target Furfuryl Alcohol in Food and Beverages,” November 9, 2017
- “Tiffany’s Trademark Infringement Victory a Costly Lesson for Costco,” September 19, 2017
- “DOJ Puts Website Accessibility Regulations on Inactive List,” July 25, 2017
- “Ninth Circuit Nixes Deceptive Labeling Claim Against Gerber,” July 21, 2017
- “Ninth Circuit Revives Baby Food False Advertising Class Action,” May 1, 2017
- “Website Accessibility Update: California Federal Court Denies Hobby Lobby’s Motion to Dismiss,” July 3, 2017
- “Retailer Loses ADA Accessibility Trial,” June 20, 2017
- “FDA Delays Implementing Nutrition and Supplement Facts Labeling Rules,” June 16, 2017
- “Retailers and Other Food Importers Must Ensure Food They Import Meets U.S. Safety Standards,” May 30, 2017
- “FDA’s Delay in Implementing Calorie Labeling Law Leaves Fat Uncertain” May 12, 2017
- “Website Accessibility Case Dismissed as Violating Due Process, Since DOJ Still Hasn’t Issued Regulations,” March 30, 2017
- “Made in USA Claims Can Be Considered Deceptive Unless Substantiated,” March 16, 2017

- [“California’s New Prop. 65 Regulations Put Primary Burden for Providing Warning on Manufacturers,”](#) April 11, 2017
- [“How to Avoid ADA Claims as Service Animals Increase in Popularity,”](#) February 24, 2017
- [“Online Businesses Beware: Accessibility Claims are On the Rise,”](#) February 9, 2017
- [“Retailers Seek to Improve Website Accessibility Following Surge of ADA Claims,”](#) January 19, 2017
- [“California Extends BPA Point-of-Sale Warning,”](#) January 3, 2017
- [“Retailers Face False Advertising Cases on Discounts from Original Prices, Rewards Points,”](#) December 22, 2016
- [“Avoid ADA Lawsuits for the Holidays by Ensuring Stores Are Accessible,”](#) December 1, 2016
- [“California Upholds Statewide Plastic Bag Ban,”](#) November 10, 2016
- [“Prop. 65 Conference Focuses on Compliance With New Warning, Settlement Regulations,”](#) September 22, 2016
- [“California Adopts New Prop. 65 Warning Regulations,”](#) September 7, 2016

## **Speaking Engagements**

- “Pesticide Regulation: Everything You Need to Know” presented at the virtual American Agricultural Law Association annual conference in November 2020.
- “Cautionary Tales in Food Labeling: California Prop. 65 Compliance, Enforcement Trends, and Defense Strategies,” presented at American Agricultural Law Association annual conference in Portland, Oregon, in October 2018.

- “Prop. 65 Food Litigation: Enforcement Trends, Defense Strategies, and How to Reduce the Risk of Being Sued,” webinar presented through Momentum, on February 1, 2018
- “Toxic Torts Food Litigation,” presented at Bryan Cave LLP in Chicago on May 4, 2017.
- “ADA Website Compliance: How to Improve Accessibility and Reduce Risk,” presented at the Washington Bankers Association Marketing Conference, March 21, 2017, and as webinars for the Georgia Bankers Association on January 5, 2017 and the California Bankers Association on January 25, 2017.
- “Prop. 65 Trends, Defenses and the Proposed New Warning Regulations,” presented at the Retailer Proposition 65 and Green Chemistry Initiative Legal Roundtable, January 15, 2015.
- “How to Avoid Copyright, Trademark and Patent Infringement Claims,” training presented to merchant teams of retailer clients.
- “How to Avoid False Advertising Claims,” training presented to merchant teams of retailer clients.
- “What You Need to Know About California Prop. 65,” training presented to food merchant teams of retailer clients.
- “Improve Accessibility and Avoid Liability Under the ADA,” training presented to district managers of retailer clients.

# Events

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**Virtual DC Summit: 10  
Need-to-Know Insights  
for Uncertain Times**

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**BC Attorneys Present  
Webinar on Prop. 65  
Food Litigation**

**Back to Business: Re-  
opening Guidance for  
California Retailers**

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**Bryan Cave Lawyers  
Address Food Litigation  
Cases**