Bird & Bird

Retail Therapy

Retail Mergers and Aspirations

2024

Transcript of Retail Therapy Episode 2

Speaker	**Details/Event/Content**
Nicola Conway	Hello and welcome to Bird & Bird's Retail Therapy podcast where we explore the trends, changes and legal aspects of the industry. I'm Nicola Conway and I'm a senior associate in Bird & Bird's Retail and Consumer Team.
Sana Malik	I am Sana Malik. I am a trainee solicitor also at Bird & Bird. In today's episode, Retail Mergers and Aspirations, we're going to discuss and unpack notable M&A transactions and trends that transpired during 2023 and that we expect to see during the next year. We're joined here today by Nick O'Donnell Corporate Partner at Bird & Bird, who is going to kindly share his expert insights and foresight here. Nick, please could we ask you to share a little bit about yourself and your practice with our audience?
Nick O'Donnell	Thanks Sana and thanks Nicola and thank you for having me on to your podcast today. I'm an M&A lawyer and in terms of background I started my career against the backdrop of the dotcom crisis. That was really the first time we saw retail and tech coming together doing spectacularly well, then doing disastrously badly and then picking up the pieces. I think in some ways that's always informed the paths I've taken in my career. I've always enjoyed doing deals in both retail and consumer and the tech space and that's what I'm really looking forward to talking about that with you both today.
Sana Malik	Thank you.
Nicola Conway	Before we get started, we need to mention that this podcast is intended to be an open forum for conversation. It does not and is not intended to constitute legal advice. If you do want any legal advice, just reach out

	to us or your usual Bird & Bird contact. We're always happy to support you and your business however we can. Let's get into this episode. So, let's start by looking back at 2023. It already seems like some time ago now but, if memory serves me correctly, there were plenty of acquisitions in the retail and consumer sector last year, whilst a lot of other sectors saw a drop off in deals. What, in your view, differentiates the retail and consumer sectors and what do we think is driving deals in this space whilst they seem to be falling in others?
Nick O'Donnell	Yes, I mean last year it wasn't quite bankers jumping off the roofs, but it was the worst year for M&A generally we'd seen since 2013. Deal values down something like 25%, deal volumes down something like 20%, but in the retail and consumer space being more optimistic as we can as that's what we're talking about today. Although, it was a quietish year it wasn't the same sort of drop off. I think there are three things that come to mind that make this sector different than the market in general. Firstly, valuations. We haven't seen in most cases the really crazy valuations you get in tech and where a seller and a buyer more or less agree what an asset or brand is worth, it makes it a lot easier to get a deal done. Secondly, retail consumer is really on the front line so where you have the cost-of-living crisis which we had inflation, interest rates and the rest of it, retail and consumer businesses often were the ones that suffered from that. So, to take an example, the backend of last year we saw Youngs buy a bunch of chain of pubs in and around London. That's really a sector that clearly has been struggling and that throws off companies that are out there looking to be bought. The third one, I think is because for the larger players in the sector at least they have multiple brands and that allows flexibility. So, for example, that could be defensive diversification. We've seen Next go out and buy and, by all accounts, still going to be buying brands. So, they bought FatFace and Cath Kidston (the one with all the colours). Then, equally it could be a way of concentrating more in your core brands by making disposals. So, we saw Unilever sell off 20 or so brands to private equity again at the back end of last year, they sold off Timotei shampoo and that one with the cheesy advert Impulse Body Spray, if you remember. Remember that one? So, lots of reasons why there was still plenty going on in retail consumer M&A last year.
Nicola Conway	I really didn't realise that the numbers across the board had dipped that much to, what did you say 20% less?

Nick O'Donnell	Overall, yes, in the number of deals probably depends which numbers you want to pick but somewhere between 16% and 22% from the numbers I have seen, but 25% in terms of overall deal value.
Sana Malik	That's really interesting to hear. Could you share some thoughts on any notable deals in the market that stood out to you last year?
Nick O'Donnell	Yes, I mean the one everyone loves talking about chocolate, don't they? I've never really done a pure chocolate deal and I've always wanted to because it always gets the most publicity. So, I'll talk about chocolate now. So, the Mars takeover of Hotel Chocolat that went through backend of last year. Again, it got a lot of coverage in the press as you might imagine but the lead story was really about the price that was paid. I think it was, let me check in my notes, £280 million they paid and that was 170% premium to the undisturbed share price, whereas normally on the takeover of the share premium is between 10 and 30, maybe 40%. So, it looked like a massive price. The story that that went out was 'well this is the problem with the London Stock Exchange, it undervalues companies' which you know I think is sort of the wrong take on it. Really, it's a retail and consumer issue that was driving what was going on there and what was happening was, to some extent, Mars were a little bit over the barrel and had to meet the price that was being asked for. Mars wanted them to be very public about it wanted to achieve premiumisation of its of its brands. That makes sense in the chocolate space because the supply chains are so murky, for want of a better word often, and if you have very low-margin, high-volume products it's hard to build into that with the checks and balances you need in your supply chain. If you're moving to slightly higher margin products, like the Hotel Chocolat products, it's a bit easier to track it more carefully. I think we'll see the continuation of that trend, not just in the chocolate industry but in other areas where supply chains are difficult and moving to more premium products makes it a bit more affordable to really track what's going on.
Sana Malik	Thank you Nick and we're obviously here for anything chocolate related! Looking into the next year, I'd love to hear more about what you think we can expect across the R&C industries as a whole but also any individual subsectors that you anticipate might be particularly interesting to watch, so fashion, cosmetics, food and beverage, or anything else you can think of.
Nick O'Donnell	It's a big question, but I mean I think we start with optimism. We'll see a slightly busier market. The interest rates and inflation are coming down, so there's reason to expect more activity. I think something interesting is around India, I mean India has had a stonking year. The Indian economy is going gangbusters and India Inc is increasingly flexing its muscle, including in the retail and consumer space. Tata has been very public. It wants to be a consumer giant. I don't see really why it won't be another Unilever within a few years' time. We'll see them

	coming and buying up more stuff. Private Equity is sat also on an absolute mountain of money. They'll be out buying more. They seem to have unlimited appetite to go out and buy high street food chains, despite a mixed track record in that area we saw. Which one was it? I think it was General Atlantic they put money into Joe and the Juice recently but that's just one example out of tons on the high street. Online retailers, I think we we're seeing they're slightly less attractive where it's only online. I was reading actually in preparation this for this chat that 60% of the clothes sold in the UK are still sold in stores not online. I think investors are increasingly being a little bit cautious about is online only something of a gamble because you're really limiting the market in lots of areas. Maybe the fourth one is what we've been seeing for a long time, the continuation of the value of experiences in terms of hotels and hospitality. A couple of big hotels have opened up not that far from our offices here recently, and there's still plenty of money going into those areas but to some extent I mean the M&A folks are, you know, follow the money, follow the hot sectors. So, I'll ask you what your view is, what do you think is going to be a hot sector in terms of areas that are doing very well?
Sana Malik	So, yes, definitely a big question. I'll focus on maybe a little small part of it in terms of consumer trends, particularly in the fashion and beauty industries, I think we're going to see the continued growth and popularity of certain products which are trending on TikTok. So, I think the general influencer nature is here to stay and, if anything, will be getting stronger in the coming year. Especially now that AI based tools are being used for content for branding even now for pictures. It just means that literally anyone can be an influencer and can affect change over consumers. I think following the pattern of selfcare and wellness merged with health benefits we saw an increase in haircare especially, and I think this is still gathering momentum. So after TikTok's obsession with Mielle's Rosemary Oil for hair growth, I don't know if either of you have seen that, Mielle is now part of Procter and Gamble's beauty group and that is solely because of the amount of social media coverage and the boom it had in terms of the consumerism and its sales last year. I think we'll see more instances of coverage, collaboration and acquisitions just like this, which have been directly derived from social media movements especially within cosmetics and fashion. What about you Nicola?
Nicola Conway	I think to your point Nick of follow the money I think it's still going to be beauty brands. I know there's been a lot going on and a lot of people think the market's oversaturated and what on earth more could happen? How many more new brands can we have? How many more acquisitions can we have? But it doesn't seem to be slowing down. One thing that I've been seeing in particular with the luxury beauty brands is

	this movement towards collaborating more with people in the sporting worlds. So, we've got a lot of the high-end beauty brands working with brand ambassadors who are actually sporting people rather than more traditional celebrity type influencers and ambassadors. I'm kind of overlapping a bit with what Sana is saying here but I think more is going to happen in the beauty space. I think there's a lot of money still to be made there and I think those who are taking that opportunity to invest in the overlap between beauty and sport are going to do very well. So, sticking with the luxury sectors specifically I was really interested in watching throughout 2023 that several brands were snapping up suppliers and this is particularly the case in the fashion supply chains. Amongst various others, we saw Chanel acquire a majority stake in the Italian knitwear company Paima. We also saw the LVMH group acquire a majority stake in Heng Long Italy which is a tannery. It seems as though those supply chain acquisitions are intended to enable them to increase their speed to market but also have greater control and greater margins, which it makes a lot of commercial sense. I guess my question is, should we expect to see more movement towards vertically integrated supply chains, or do we think given the persistent market challenges we can expect more brands to kind of sit tight this year weather the storm, keep their current supply chains as they are and wait it out?
Nick O'Donnell	Yes, the first one. We'll expect more, just for exactly the reasons you say. I think the other example that I was thinking of was Golden Goose who make these distressed trainers. I don't know if you've seen them? I hadn't heard of them to be honest before, but I have a cousin who knows about these things and apparently they're very in with Taylor Swift and Selena Gomez. So, they have this superstar badge logo thing on the side if you've got $500. Anyway, when I looked into it, I realised I hadn't read about it because they're rumoured to be doing an IPO. One of the things they've been doing in their build-up to the IPO is buying their supplies for just the reasons you say, having that control, reassuring investors that they have control. I think that's the polarisation we will see the companies that are doing very well, like Golden Goose and the companies you mentioned Chanel, LVMH obviously very strong financial companies. They'll be continuing to do that. On the other hand, for companies that are struggling a little bit, acquisitions are expensive, they're hard to integrate, they come with complexity, they distract management so if you're not feeling so confident then the second of the two options you gave me, they'll be hunkering down and waiting for the markets generally to be a little bit more positive.
Sana Malik	If we focus on beauty and cosmetics specifically, it seems as though last year was a relatively slower year for M&A deals in beauty. So, Nick,

	do you see any rationale for this and if so, do you think that will change in the next coming year?
Nick O’Donnell	Yeah. We've talked a lot about beauty, haven't we? Because in some ways it's very busy, but in some ways in terms of pure number of deals there aren't millions of them. I think the reason for that is because when you think about beauty brands they're so tied up with the self-image of the consumer. So, it's your scent or it's stuff you're putting on your face that when it works, and it hits, it's a fantastic business to be in. That makes it from an M&A perspective expensive, because there's a real value attached to that and that just makes it that much harder to actually get those deals across the line because it's suddenly writing very big cheques. The two that stood out in terms of the deals last year. One was owner of Gucci who bought Creed the fragrance brand which is a great brand. They paid, again checking my notes here, €3.5 billion. Now that's a lot of money for a brand with a great heritage and so on but it's still a big number. Then the other one was L'Oreal who bought Aesop the Aussie or originally Aussie soap maker. In fact, I've been to their store not long ago in Covent Garden just around the corner and it's a great space but, again, they paid $2.5 billion I have written down, that’s a big number. I think when you start talking about the sort of multiples that are applied there it does just make it a bit harder to get deals away.
Sana Malik	Yes, that makes sense. Off the back of that, what could beauty brands then be doing to make themselves more attractive for investment? Could private equity houses be the key to securing more investment in that respect?
Nick O’Donnell	That's a good question. It makes me think I know you've got a queue of people waiting to come on to your podcast to talk about how to do these things, and it makes me think you should get some venture capital experts to come on and talk about that because there's such an army of consultants out there who will give advice as to how best to do this. I mean the one view I would have is certainly private equity and the wider venture capital community is part of the answer there. But in terms of an approach, I think because there is a degree of scepticism around actually it is great when beauty brands work, but there's a lot of brands that just don't work that you have to be really hardnosed. You don't want to be leading in the conversations talking about your passion for the brand, in this case you want to be leading with the numbers, you want to be cold, dispassionate, hardnosed all of those things. You want to know where every pound or dollar or euro in your business is and how much money you need exactly. That's what investors want to know, particularly in that space. That leads me on to something that's always I've never really known the answer to, so let me take the opportunity to ask you the question. Where you have brands particularly maybe in the beauty space but also maybe equally in the fashion space where they become owned by

	private equity, do you think consumers care about that? Have an issue about that? Do they know who the owners are? Does that affect the viability of the brand itself?
Nicola Conway	Honestly, I don't think that consumers know or care about who owns the brands. I think they care about who uses the brands. So, if we think of Hailey Bieber's brand, Rhode. I don't know if she owns it or not, but we all know that she uses it and it's enormously popular. I think the same could be said for Haus labs which Lady Gaga is the face of. I don't know if she has any ownership in that whatsoever, but we know she uses it and she talks about it and I think that's what makes it attractive at the consumer level, rather than who holds the purse strings.
Nick O'Donnell	That makes sense. What about a brand where you've actually got the founder's name in the name of the brand itself, but the founder no longer owns it? Do you think that's again it would be the same answer that it doesn't matter? It's about who uses it.
Nicola Conway	I think so, I think if you think of Jo Malone, the fragrances, she's no longer involved in that brand at all. I think it's still enormously popular, although to be fair that one's been around for quite a long time so it has earned its goodwill whilst she was at the helm. But I don't think so.
Sana Malik	I have to agree with Nicola on that point and I think it's probably because we're seeing like a change in culture and demographic of who maybe a large part of consumers are now so Gen Z is the newest, largest demographic coming in as a new consumer. They are known to take issues like environment, CSR, ethical work practices really seriously as well as kind of having this awareness of who the brand is used by and celebrity endorsements and things like that. Probably, what is something more of a make-or-break issue is perhaps negative publicity or something unsavoury coming to light in the news. I think we saw that last year when various fast fashion brands were heavily criticised for environmental impact or lack of workers' rights. There was like kind of an en masse boycotting of some fast fashion retailers. I think these could be further obstacles as opposed to even an awareness of who's owning the brand.
Nicola Conway	I think that's fair. I think just to tie a bow around that, I think we have the same view that consumer purchasing decisions are steered by a lot of things but maybe who owns the brand is not one of the top five or ten even.
Nick O'Donnell	Well, that's good news for private equity.
Nicola Conway	Other than ownership and maybe we can give a broader view outside of the beauty industries, specifically what do we think makes an asset more or less attractive?

Nick O'Donnell	Yes, a lot of things. I think we're all lawyers here, so we're all sort of worrying a bit about risk and are a bit conservative, but I think the one that stands out for buyers is, look, every brand has problems but it's how they've reacted to that problem, particularly in terms of areas like the supply chain, product liability, greenwashing. Having that track record of reacting in the right way and being upfront about it I think that's really helpful. Technology, everyone is terrified about the cost of technology. It's not necessarily that you have to have the greatest website but the FD, whoever the buyer is, is going to want to not think they're going to have to buy this asset and suddenly chuck in £50 million to fix the website. The third one is slightly more intangible, maybe more your area than mine but I think in some ways fitting in with the zeitgeist but in a way that makes business sense. Sana, you were talking before a lot of things around sustainability and what consumers are interested in and I think there can be a degree of caution in terms of that's great and clearly there's a market for that and it drives consumer behaviour, but it has to make sense for the for the brand. Let's take a slightly different example, Abercrombie, so, when I was young that was a brand for people who were good looking or thought they were good looking which was slightly more egocentric I think then. So that was a good place to be in because everyone kind of decided that they were an Abercrombie shopper, and it was fantastically successful. Then it slipped a little bit. There was a scandal. I can't quite remember the details. We won't go into, but actually in the last what year or so it has now repositioned itself as being a kind of entry level luxury goods brand which, at least in the US market today, that's a great place to be. You can see how they've sort of ridden a wave and they've gone back to the people they were selling to 15 – 20 years ago. They've gone on to a slightly different trend and their sales are doing tremendously well. Now, I'm not saying that they are an acquisition target. I doubt they are, but it's a way of trying to exemplify that you want to be following the trends but in a way that you can see flow through to the bottom line.
Sana Malik	Looking internationally now, if China hits a slowdown how would that affect the sector M&A market?
Nick O'Donnell	Yes, so that's the sort of thing that keeps people awake at night. If there's a real hard slowdown in in China from a pure M&A perspective the Chinese aren't here in huge numbers with a huge force, at least not in recent years. So, we saw Shein buy the some of the rights to the Missguided teen brand recently but that was a relatively unusual example in in recent months anyway. Obviously from a consumer perspective, the Chinese consumer is as important these days or, nearly as important perhaps, as the US consumer and in the luxury goods space even more important. I read the report from Bain who said by 2030 Chinese consumers will be buying 40% of all luxury goods. So, a hard landing there clearly would have an impact. Now from an M&A

	perspective, actually that may drive further activity, but it would overall probably be damaging for the M&A market and could be difficult for the wider market. Having said that, personally I don't think China will hit a hard landing. It's got so many levers to pull. Still, the one interesting area while we're talking about macroeconomics and politics, which we sort of are a little bit is around what people aren't worrying about is what's going to happen in the US election in November. My sense is that US boardrooms have decided it's all too hard and difficult to have those conversations frankly, so they've decided to separate politics and economics and we'll just see what happens. But as we get further along into the year and as the US election becomes closer, we may see people rushing to get deals done before we get to Election Day because right now it looks like we're running into a Biden-Trump runoff and people seem very unclear as to what that's going to mean in all sorts of areas. Retail consumers probably not top of the list, but it will be affected like everything else will be. So that's something to see what will happen.
Sana Malik	Yes, really interesting and so good to hear things on like a macro level like that. Turning to the economic climate, is 2024 going to be the year when insolvency teams are the busiest in the city and there is just a flood of distressed deals do you think?
Nicola Conway	I hope not!
Nick O'Donnell	Well, you say that but we have insolvency colleagues and their insolvency teams around London who've been waiting for this moment, but actually they've been waiting frankly since 2008. I think they'll still be waiting. It's been the dog that hasn't barked for more than a decade. We obviously we saw Wilko go down into administration last year. That was a big deal in itself, but actually I think we'll still continue to see these odd ones go into insolvency but not a huge rush of them, because there is frankly just, I don't want to say too much money, but there is a lot of money floating around and probably a lot of it quite badly allocated. That allows companies to survive when they perhaps otherwise wouldn't be. It allows there to be solutions other than administration. I mean you just need to look at the Bitcoin price now has been going up and up or back up to about $50,000. Now, you may well, with some reasons, say well there's no justification for whatever's going on with the Bitcoin price and you can't really analyse it. But, at the same time, there is some sort of underlying fundamental that there must be a lot of money floating around that people are putting and feeling comfortable putting that sort of money into crypto still. So, I think for that reason not a lot of insolvencies this year relatively and we'll have the same conversation again next year.
Sana Malik	This time next year. So based on everything that we've discussed here today, if I was a private equity executive in the retail and consumer

	space would I be feeling confident on the whole about the market for 2024?
Nick O'Donnell	Yes. I've been doing private equity work for about 20 years, and I've never met a private equity executive who is not confident. So, yes, I can say yes you would be confident. Actually, there's tons of good reasons why you would be confident. Last year was a bit slow, the banks weren't lending or at least not lending in the same way. B. we sit on so much money. I think the numbers are sort of banded around is there are $2.7 trillion of so-called dry powder which is a number so large it's effectively limitless and the banks will lend as well. So, there's plenty of firepower for them to go out and buy stuff. There are plenty of reasons especially in the retail consumer industry, it is driven by fashion even outside the fashion segment. So, opportunities always come up. I think good reasons for them to be optimistic.
Nicola Conway	Thanks. Love that we end on a positive note. It's nice. Let's close the episode with a fun light little question. Nick and Sana, what's something that you've purchased recently that you love?
Nick O'Donnell	Like to go first?
Sana Malik	Ok, so I have one of the new Fitbits which I'm wearing right now. I know our listeners can't actually see that. So, what I like about this is that it actually encourages me to move if I've been sitting for more than half an hour. Obviously, sometimes I have to ignore it, but for someone who's like in quite a sedentary environment in work in the office it's I think it's really useful. So, it's something I definitely recommend for people looking new year, new me health resolutions.
Nicola Conway	That's very cool, can you swap the straps on these ones?
Sana Malik	Yes you can, it's customisable! I feel like I'm selling it, I'm actually not, #NotanAd but I'm enjoying it yes, what about you Nick?
Nick O'Donnell	Great, well I'll put one of those on the list. I don't - I'm very bad at buying for myself but I bought as a Christmas gift an AnyaHindmarch handbag which I really like the brand because I think the reason it's a great British brand, and I think the reason I like it is it has that degree of wit about it that actually the world's so serious and brands tend to be very serious. I mean obviously on x/ Twitter and social media and advertising people you know try and bring in witticisms and sometimes it works and sometimes it doesn't and sometimes it's just a meerkat with a funny, funny voice. But I think to actually have it in the product itself. So this handbag was one that has kind of googly eyes on it like there are quite a few of them that have that motif if that's the word I'm going for. And also it was a gift that went down very well which is unusual for me. So I'm particularly pleased about that.
Nicola Conway	I love that stuff, It's fun, It's so much fun.

Nick O’Donnell	What about yourself?
Nicola Conway	It's cold. We've had snow and I have repurchased for about the eighth time the La Roche-Posay lip balm.
Sana Malik	Yes
Nicola Conway	Not very exciting but it really works. I love it.
Sana Malik	OG product. Alright, and that's the end of our episode. We'll be back soon with another one and we hope to meet you there.

Thank you

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