

## Retail Therapy:

### *Unboxing Bias in Retail*

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#### Transcript of Retail Therapy Episode 8

Nicola	Hello and welcome to Bird & Bird's Retail Therapy podcast – where we explore the trends, changes and legal aspects of the retail & consumer industries. I'm Nicola Conway – I'm a lawyer who specialises in the retail industries, and I'm a consumer who specialises in shopping!
Sana	And I'm Sana Malik, I'm a Trainee Solicitor also at Bird & Bird. In today's episode: We're going to discuss diversity and inclusion in the retail industries. We're joined by Adeena Hussain who is an associate in the Bird & Bird Brand Management team. Adeena, would you like to kindly introduce yourself and a little bit about your practice?
Adeena	<p>Yeah, thanks Sana and Nicola for having me on the podcast, so as you said I'm an associate in the Brand Management at Bird &amp; Bird which sits within the Intellectual property team. So we help businesses to create, maintain and enforce their brands all through the lens of trademark protection. I work with clients across all areas of the R&amp;C industry –clients such as hotel chains, food and beverage companies, footwear companies, skincare brands, the lot!</p> <p>I also co-chaired B&amp;B's BAME network called Embrace when it was founded around 6 or 7 years ago now – where I ran a podcast series called Embracing the Conversation where we interviewed leaders in the D&amp;I space to get their thoughts around this topic. So it is quite a novelty for me being on this side of the mic in this podcast!</p> <p>Also, as a British Pakistani Muslim woman from up north in Manchester, as you can tell by the accent, and I am super passionate about working towards increased diverse representation, not only helping businesses like B&amp;B but companies in the city and wider outside of the law too.</p>
Nicola	<p>Great stuff - let's get into the episode!</p> <p>Maybe we can start this conversation at the very top of a brand, with who owns it and who fronts it. Adeena, in your view, how important is the role of leadership in a brand in either adding to or pushing forward the diversity, equity and inclusivity (or DE&amp;I) within a brand?</p>

Adeena	<p>I think who owns the brand and also who is the face of a brand is a huge factor when it comes to D, E &amp; I.</p> <p>Drawing on a few examples that I think are totally nailing it on that front. So one of them quite topical right now is Huda Beauty. So Huda Katan, she grew up in the US to parents born in Iraq. She's Muslim, and she's recently been praised for taking back the reigns as CEO and redesigning the brand with herself back at the helm She's got a whole range of coloured cosmetic products, different undertones, catering to different skin textures and colours. And so her being that very visual of representation of diversity at the head of the brand, that makes a huge difference.</p> <p>Another example is Haus Labs by Lady Gaga. I personally think she can do no wrong, I'm absolutely obsessed with her and everything she does but her entire messaging is about inclusion, she has drag queens and trans activists promoting her products – she also has 51 shades of foundation and make up infused with skincare properties – she has claims of being cruelty free, vegan, has super planet conscious packaging – so that's all really is the ethos and at the core of the brand. And it also really speaks to what she represents and sings about in her musical career too.</p> <p>Taking another example in a different, slightly different industry in fashion, Chanel, you've got Virginie Viard, woman as creative director, supported by Lenna Nair, British Indian business executive who is CEO. So, you've got women, ethnically diverse women in those rooms making those decisions about the future of the company.</p> <p>So having that diverse representation right at the head of these brands, leading these companies, is really important and a huge draw to attract a really wide and diverse consumer base.</p>
Sana	<p>We just love the examples you've drawn on there, Adeena. I think Nicola, we've actually mentioned this before, but Nicola and I were really lucky enough to see the Haus Labs, Lady Gaga's kind of hugely inclusive 51 shades of foundation in action at the launch event with Sephora.</p> <p>Another diverse CEO whom I personally love is Indra Nooyi, the former CEO of PepsiCo. She's American Indian, she played a huge role in shaping the company's global strategy and shifted PepsiCo's focus to healthier products, worked to improve sustainability initiatives and that kind of thing, and perhaps most notably: introduced design thinking into the company's innovation process and she's very upfront and she does some masterclass kind of talks and seminars about how it was for her making her these decisions as the only female in the boardroom and then also at times the only ethnic minority in the boardroom and pushing these really innovative ideas.</p> <p>So you're right - the people at the helm of a company have a lot of power to promote important values. Increasingly social media is a powerful tool in enabling consumers to spread the word about the D, E&amp;I steps being taken by brands, but also something brands can use to understand their audience with through marketing and engagement tools, so I guess that allows for a more authentic offering than something just a tick a box exercise. Maybe we can dig down into some of the values individually though because they're all important in different ways. As we've started with Huda, let's start with race?</p>
Adeena	<p>Yeah, let's do it. Speaking of race, I actually <a href="#">wrote an article</a> for Bird &amp; Bird back in 2020, you know, following the kick-off of the Black Lives Matter movement, where in the article I talked about making sure that these values, whatever they are, that they aren't just talked about when it's trending on social media or when it's black history month and that these topics are some things</p>

	<p>that are intrinsically woven within the core and the ethos of the brand. So thinking about individual values, huge shoutout to someone like Rihanna. She has 50 shades of her foundation range her marketing and advertising campaigns have a really organically diverse range of models that very clearly represent all the intersectionality's and the cross sections of what diversity looks like in society. And then you've got her SAVAGE lingerie line that's modelled by men and women, disabled men and women, people of all races and ethnicities, people of all body shapes and sizes, and it really is at the heart of her brand to make people look and feel good – and she just manages to get it right in the most authentic and genuine way, showing that those values are really important to her and they're fed through in her brand as talking about, you know, diversity and race and foundation shades and lack of inclusivity in stores and that kind of thing.</p> <p>Sana, we've talked before about foundation shades / lack of inclusivity in stores. What's your view on where we were at in our childhood or young adult lives, versus now in 2024?</p>
Sana	<p>That is a very good question! I think D&amp;I within the makeup and cosmetics industry have undergone significant improvements since the 90s. I think there has been a shift towards a more inclusive and representative landscape as you've mentioned with these huge, you know, vivid campaigns that have been super inclusive.</p> <p>In the past, beauty standards often centred around a narrow definition of beauty, predominantly featuring one-dimensional portrayals of race, gender, and body type. However, today's makeup brands have made strides in offering a more diverse range of products to cater to a wider array of skin tones, genders, and cultural backgrounds. I think there's been a notable shift towards inclusivity in marketing campaigns as you mentioned, with brands embracing models and influencers from diverse backgrounds to showcase the versatility of their products – Charlotte Tilbury uses a variety of tones for its marketing campaigns and in fact a lot of their colour palettes are central to the rose golds are actually most suited to caramel and brown tones. So, were seeing huge strides in that regard.</p> <p>This evolution not only celebrates the beauty of all individuals but also empowers consumers to express themselves authentically through makeup, fostering a more inclusive industry overall.</p> <p>Speaking of Rihanna, the launch of her beauty brand, Fenty Beauty, in 2017 was a pivotal moment for the rise of inclusive beauty with its revolutionary range of foundation and concealer shades, like you've said Adeena, and I guess just looking for, you know, a cultural moment is just to acknowledge how the BLM protest in 2020 was obviously political but it was also cultural movement which put pressure on brands to heighten inclusivity in products.</p> <p>These events increased traction of inclusive beauty and, since their occurrence, there has been significant progress in the industry:</p> <ul style="list-style-type: none"><li>- We're seeing a number of high-street beauty brands followed suit with diversity of foundation shades, such as Maybelline.</li><li>- A number of retailers, Sephora included, have committed to US-based non-profit, the 19 Percent Pledge, promising to dedicate 15% of their shelf space to black brands. <a href="https://www.fifteenpercentpledge.org">Fifteen Percent Pledge (15percentpledge.org)</a></li></ul>

	<p>I just don't think we would have seen this back in the 90s so it's nice to see how far we've come in that regard.</p>
Nicola	<p>I just wanted to pick up on one thing you mentioned there Sana, which I think is so important. In addition to what you're offering and selling, I think it also matters so much how you market your brand and your products. For example if you're a makeup brand or a fashion brand and the models you work with aren't diverse, and the influencers you collaborate with aren't diverse, this can also have an impact on how inclusive or exclusive you're being.</p> <p>And in a broader sense, this is something that many publications miss, and we see them get called out for it quite a bit. So for example - If you're a beauty magazine and you're only featuring products that are targeting or designed for able bodied people with Caucasian hair and Caucasian skin– whichever way you look at it you are excluding a large proportion of society from your readership, and I think that's something that gets missed still.</p>
Adeena	<p>Yeah, exactly, and I think companies can't hide away from that with the rise of social media, now we know about everything and it makes me think about a company called Pink Honey, they're a beauty brand that blew up on TikTok, and they had a brand kind of press trip that faced a huge amount of backlash for the lack of diversity and the influencers that were invited to attend, so it's something that needs to be considered right at inception of the brand or the product, straight through to how the products are sold at the end.</p> <p>Sana, let me ask you – we've kind of covered race– I know that you're part of Bird &amp; Bird's neurodiversity network, so, can you share your thoughts from that perspective as well?</p>
Sana	<p>Yeah, of course. Neurodiversity is something really important to me! I have ADHD and Dyspraxia myself so it's definitely an important thing that I think consumers and brands alike are becoming more aware of.</p> <p>Neurodiversity significantly influences the shopping and retail experience for consumers in various ways. For individuals with sensory sensitivities, such as those with autism spectrum disorder (ASD) or attention deficit hyperactivity disorder (ADHD), crowded and noisy environments can be overwhelming, affecting their ability to navigate stores comfortably. Retailers can address this by providing sensory-friendly spaces or quiet hours, creating a more inclusive environment, which is something we speak about in our Sephora episode too – this is something which Westfields in the UK actually implements.</p> <p>Additionally, neurodiverse individuals may have unique preferences and communication styles, requiring retailers to offer diverse product options and flexible customer service approaches. Embracing neurodiversity not only enhances the shopping experience for all consumers but also fosters a more inclusive and understanding society.</p> <p>Selfridges is one of the retailers that have a “quiet shopping hour” once a week – it lowers or turns off music and switches off screens to provide a calmer, less overwhelming experience catered to customer needs.</p> <p>Superdrug equipped its website with a range of personalised accessibility tools to facilitate the shopping experience for neurodiverse customers. The “Assist Me” tool provides accessibility adjustments, such as changing word / letter spacing for those with dyslexia, page saturation adjustments for those with impaired sight or who are colourblind, and the option to mute sounds, stop animations, and highlight sections of certain text for those with ADHD.</p>

	<p>And just for a moment acknowledging, since 1 in 5 of us classify as neurodivergent, more could be done to ensure the beauty retail space is neuro-inclusive – welcoming for all. Making small changes to sight, sound light and even textures can go such a long way.</p> <p>And, Nicola, - other than what we've touched on already, I know you are part of several women's networks inside and outside of the firm so presumably gender diversity is one of the diversity categories that's really important to you?</p>
Nicola	<p>Yes definitely. But the gendering issues retail spaces go many different ways.</p> <ol style="list-style-type: none"> <li>1. In some spaces we're seeing women being minimised, we sometimes see that in sporty spheres or automotive spaces where marketing seems to focus more on male shoppers.</li> <li>2. But sometimes we're also seeing men being minimised.       <ol style="list-style-type: none"> <li>a) We have a specialist group in the firm that focuses on cosmetics, beauty and fragrance law and everything surrounding that. And something that we talk about quite a lot in that group is how strange it is that something like skincare or body care would be targeted mainly if not predominantly at women – as if men don't also have skin and bodies!</li> <li>b) And my thoughts on this are a bit complicated because on the one hand I do understand why brands are doing this – and it's predominantly because most data will show that women shop more and spend more in the beauty category than men do so it's a better bet for companies to invest in marketing to women rather than men.</li> <li>c) But on the other hand – and where the issue sits for me – is that this actually a self-fulfilling prophecy in that acting this way reinforces the data so that it stays the same. Because if you don't market to men, or if you don't extend your marketing to include men - they won't increase their shopping or spending habits because you're not bringing them into the mix or into the conversation. And whichever way you look at that, it perpetuates this idea that the beauty industry is for the girls and all of the boys are excluded which is just so outdated. Something that I think about a lot because I'm a fragrance head is perfume or cologne or whatever you want to call personal fragrance; it always strikes me as very strange to gender a smell. I personally love wearing lots of different fragrances and I personally don't care if it says "for her" or "for him" on the bottle or the packaging. But I think some men might feel less comfortable picking up, buying and wearing a perfume that is exclusively marketed "for her". So in that way men are blocked from experiencing whole categories of fragrances or whole categories of retail.</li> </ol> </li> <li>3. And also zooming out here because I've only spoken about binary men and women, which is another mistake that brands make in their marketing and sales strategies. There's a huge open space for retailers and brands to recognise and honour individuals who don't sit in those binaries, it's just such a missed population.</li> </ol>
Adeena	<p>Yeah, I completely agree with all of that, and I think touching on the fragrance point, I'm a huge fan of quite kind of musky tobacco kind of undertone fragrance and their always marketed towards men which means that they're, you know, the black or dark blue packaging and all of that surrounding it so yeah I completely agree and we need to see a bit more of a movement away</p>

	<p>from gendering things so strictly unnecessarily. It's the same in clothing - I have a 3-year-old daughter and most of the time she is in clothes in the "boys' section" of the store partly because they're more conducive to her being able to run around freely in a park and very comfortably, but also because I just massively reject the notion that clothes should be gendered at such a young age so I definitely, as I've said, need to work on towards removing those really strict labels and boundaries.</p>
Sana	<p>I love that, I personally loved wearing boys' clothes, like my parents couldn't actually stop me from doing that when I was your daughters age. So yeah, I love that.</p> <p>I think we can see some improvements in the status quo though in terms of beauty being opened up to men. Some notable examples:</p> <ul style="list-style-type: none"> <li>- Harry Styles has a nail varnish and make up brand</li> <li>- The rise of social media and influencers testing products, shades, and this being advertised and modelled by men too.</li> <li>- So one that I love to follow particularly, and he's with Sephora, is being JVN. So, Jonathan Van Ness, who is a hairdresser but then also is amazing on Instagram, he doesn't shy away from the camera at all. He tests every single product on his own hair and hell do it in a dress, hell do it with glitter and its amazing and I can imagine it makes a lot of men and non-binary people feel super seen by that kind of campaigning.</li> <li>- We've also got Chanel. Chanel has a "Boy de Chanel" line – marketplace for men in cosmetics with products such as foundation, lip balm and eyebrow pencils. Such a big, high-end brand – sets precedent for the industry and its exciting to see what can come from that.</li> <li>- I think there's also a general rise of male influencers that are also campaigning to open up the industry to men in terms of cosmetics.</li> <li>- Outside of cosmetics we are even seeing the likes of Timothee Chalamet being used for Cartier jewellery and he's got the diamonds and the pink diamond on him for various premiere so I think we are seeing in society anyway, a gradual change in itself away from stereotypical masculine norms and it will be exciting to see what comes from that in terms of the brands and retailer themselves.</li> </ul>
Nicola	<p>Your so right! Those are great examples. And actually, sticking with your positive attitude, a different diversity that I think is becoming more celebrated or at least recognised in retail is on the ability / disability / accessibility side of things. Unilever has a brand called Degree that sells deodorants with magnetic closures instead of twisting cap closures which is a much easier component and application for anyone with dexterity challenges.</p> <p>There are also companies such as Guide Beauty and Grace Beauty that designs makeup components with better grip points which means that someone with for example Parkinson's disease or arthritis might be more able to more easily apply eyeliner or mascara. Which are hard to apply at the best of times! So loads of cool innovations in that space.</p>
Sana	<p>That's amazing, so good to hear. And it's amazing to hear about such inclusive examples from a different perspective with health and ability.</p>

	<p>So...moving into a bigger and broader final question here for you Adeena.</p> <p>What are some tips in your view that companies should take away in terms of how they can get D, E &amp; I right, in an authentic rather than tokenistic way?</p>
<p>Adeena</p>	<p>Yeah, that's definitely a bigger and broader question! I think overall, companies need to firstly see that these values are at the core or at the heart of you brand and that you're really committed to working towards them. Consumers can see through something inauthentic. But we can break it down.</p> <p>Really it starts at the brand inception, think about:</p> <ul style="list-style-type: none"> <li>- What is your USP? What are you selling, what is your need in the market? Who are you appealing to? Who is your target audience in terms of any sort of demographic?</li> <li>- From there think about how you will be presenting this idea through your brand. As a Trademark lawyer my mind goes straight to what is the product/service name, have you done the appropriate clearance searches to make sure you can use the name, and have you got protection in place for that name or brand or logo, so you're covered before you start using it in the marketplace. Have you thought about brand variations, international expansion – things in the future pipeline that need to be considered. But aside from that, what is the brand name itself, does it promote the kind of message you want your consumers to receive, and who will represent and be the face of the brand as we discussed earlier?</li> <li>- Then thinking about diversity, equality, equity, inclusion on an external and internal level –</li> </ul> <p><b>Internally</b> – what are your recruitment and hiring policies? Do you have the right people with a seat at the table in those decision-making rooms to be making informed decisions and choices that take into account a variety of opinions and viewpoints that reflect and represent your consumers? What are your D&amp;I policies? Do they need refreshing if it's been a couple of years, and what new initiatives or networks could you put in place to ensure your maintained efforts in this space?</p> <p><b>Externally</b> – who is the face of your brand? Who is at the helm but also who are you working with? Do your influencers and celebrities represent your target consumers? Are your agreements with these people who are representing your brand airtight on terms that ensure they align with your internal brand policies and views?</p> <ul style="list-style-type: none"> <li>- Be mindful of what technology you're using to sell your products – AI is a hot topic right now and it is really exciting thinking about what it can do. But make sure it's regulated and inclusive in its thinking – if it is being used to find foundation shades for people when they upload pictures online – is the tech accurate, will it be able to pick up a range of skin tones and under tones, in virtual changing rooms, are you able to have access to a broad range of sizes or clothing with accessibility features and recommendations?</li> </ul> <p>Lots of other business considerations at play but as a lawyer, my mind goes to the legal – so looking at the intellectual property of the brand in their TMs, the employment practices and contracts, commercial agreements – by weaving D&amp;I into the company and making it a consideration in all aspects of the</p>

	business, it's more authentic and definitely not tokenistic or just paying lip service to a hot, trendy topic.
Nicola	Thanks Adeena so much. Those are really helpful tips and tricks for how brands can be getting it right which is so important.  Let's close the episode with a fun, light little question – Adeena and then Sana, what's something that you purchased or were gifted recently?
Adeena	So I am actually doing a no spend 2024 where I'm technically not allowed to buy anything that isn't absolutely necessary, which for me is shows, clothes and bags because I'm a total shopping addict. However, very topical for this podcast, skincare and makeup is off the list. That's an exception because I thought I needed something to get me through the year. And I was actually listening to one of your earlier podcasts with Megan Harrison talking about simplifying beauty routines and people kind of stripping it back a bit, and I'm totally with you Sana, in that I don't even know <i>how</i> many steps skin care routine because I just love the ritual of it all. And so something, I guess it's nothing that I've purchased recently and loved but something that I am really enjoying right now is just the routine of it all. I can't quite put into words the enjoyment that I get out of doing all of those steps in my morning and evening skin care routine and taking that little bit of time, you know I'm a working mum, so I don't get a lot of time, but I really, really enjoy having that moment of self-care really and letting myself breathe. I get my Gua sha, my face roller out. I've got my glycolic acid serum and then the vitamin C serum and then the retinol eye cream and so I'm like, I am not simplifying my skin care routine. I'm asking for all the acids on my face and so yeah, I would say something that I am loving at the moment is my skin care routine in general no matter how elaborate it is, I'm quite enjoying the ritual of it all so yeah!  Sana, what about you, what is your recent favourite?
Sana	Well firstly, your skin care routine is paying dividends because you look incredible today. You look like a beautiful, like glazed donut, Haley Bieber!
Adeena	For the viewers at home - I'm glowing!
Sana	For the viewers at home she looks incredible, so there you go, Gua shas for the win.
Adeena	Thank you!
Sana	For me, okay so slightly topical from what we've discussed today, but my mum actually gifted me some coconut oil because she almost passed out when she saw how dry my hairs gone with the change in weather and I have naturally super curly hair but I straighten it every single day, which I'm trying to again, trying to kind of steer away from, but in the interim, I need to work on the damage. So, she got me Vita coconut oil which can be found in Holland & Barret, but she said this is like an old school home remedy that her mum used on her back in Kenya when she was growing up. It's been amazing, it just kind of rejuvenates any kind of dryness from the root down to the ends and I highly recommend it, its super natural, it smells amazing, and you can actually sleep overnight with it. It genuinely shows an impact after the first use. So, it's a no brainer.  What about you Nicola?



Nicola	<p>Well now I feel like I should have bought something cosmetic...I feel left out now!</p> <p>The last thing I bought was a pair of earrings and a ring from Mejeuri during their Diamond Week sale which was a really good sale by the way. I went to get my ears re-pierced so I knew I was coming out with a new pair of earrings, but I couldn't help it I had to treat myself to a little ring as well. I'm kind of doing the opposite to what you're doing Adeena, I'm doing a spendy 2024!</p>
Sana	<p>Amazing, that sounds incredible, and no, I've never heard of diamond week before, I need to get on that!</p> <p>Alright that's the end of our episode – thanks for joining us! If you'd like to join us for more Retail &amp; Consumer discussions, don't forget to subscribe or follow wherever you listen to your podcasts so that you're notified when the next episode goes live. Bye for now!</p>

# Thank you

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