

# Shoptalk 2019 - The Transformation of Retail on Full Display

**Akin Gump**  
STRAUSS HAUER & FELD LLP

## Retail Industry Alert

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"I sleep like a baby . . . I wake up every two hours crying." - Jim Donald, President & CEO of Albertsons when interviewed at Shoptalk about how he deals with the pace of certain competitors.

"The industry is in such a sea of change," said Erik Nordstrom, Co-President of Nordstrom Inc. during an interview at Shoptalk's 2019 conference. He spoke of the company's commitment to customer service, penetrating the New York City market, better connecting physical and digital sales, evaluating overall market strategy and testing smaller format, scalable local outposts during a Q&A with CNBC reporter Courtney Reagan. Highlighting the importance of agility, Mr. Nordstrom explained that "[t]here's a general direction of more digital influence in customers' lives. We need to move faster to address that." The concepts of retail evolution, rapid innovation cycles, growing omnichannel business, increased automation and product and experiential differentiation framed this event, which—in its fourth year—took place March 3-6, 2019, with 8,400 attendees. Leaders from many of the world's leading businesses in retail, technology, media, direct-to-consumer, financial services, shipping and logistics, and grocery—as well as private equity firms, venture capital investors, consulting firms, business school professors and start-ups—led five tracks of substantive sessions, gave keynote addresses and presented "tabletalk" lectures. We were pleased to attend this conference for the second year in a row. We heard from industry leaders on the digital transformation affecting nearly all consumer-facing businesses, and added perspectives on the evolving legal and compliance landscape to the conversation. Shoptalk CEO Anil Aggarwal opened the conference by sharing the objective of promoting "intellectually honest conversation" across the industry; Shoptalk delivered just that.

Not surprisingly, cutting-edge technology tools fueling a data-driven retail movement and more personalized direct-to-consumer marketing were front and center. We learned about their conception, development, testing and, in some cases, implementation and experienced them through interactive product demos in an expansive exhibit hall. Presentations addressing data optimization, artificial intelligence and enhanced personalization highlighted the newfound ways that companies are approaching the collection and use of data and responding to an unprecedented level of consumer demand for curated and customized experiences and product and service offerings. Other topics of discussion included:

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- loyalty programs
- biometric technology
- algorithm development
- consumer communications
- image recognition
- augmented and virtual reality
- mobile and physical tracking
- data matching and mapping
- digital advertising
- targeted advertising
- scan-and-go technology
- leveraging stores as fulfillment and returns centers
- integrated physical/digital experiences
- customer retention tools
- influencers, reviews and social media
- physical and digital footprints
- data privacy and ethics
- satellite and cell phone ping data
- stores of the future
- voice-enabled commerce and visual searching
- local small format store concepts
- elevated and immersive in-store experiences
- redefining luxury
- tailored text messaging programs
- the cannabis and wellness space
- supply chain, logistics and fulfillment
- attracting and retaining younger consumers
- environmental consciousness and sustainability
- frictionless transactions across channels
- growth opportunities abroad, including in China and Latin America
- private brands
- recommerce (secondary market sales).

Accompanying many of the technological developments are evolving legal and compliance challenges, particularly centered on privacy. This year's conference touched upon the complex legal and regulatory frameworks in the United States—with its patchwork of state laws and regulations—and abroad. Presentations included

privacy discussions with some of the world's most high-profile companies. A data ethicist shared that there are presently more than 100 potential privacy laws percolating at the state level with 11 of them resembling the California Consumer Privacy Act (CCPA), with its broad definition of personal identifying information. Integrated tools exist to track the customer journey at every touchpoint, which enables retailers to provide the highly personalized service and meaningful interactions that modern consumers demand. Vendors shared that retailers will be at a competitive disadvantage if they do not move quickly and keep up with the latest and greatest trends. This rapid push towards new technology should prompt counsel for retailers to think carefully about educating their internal business partners about compliance issues. This is critical, particularly with an active plaintiffs' class action bar keenly focused on consumer privacy issues and laws like the Biometric Information Privacy Act, the Telephone Consumer Protection Act, the Wiretap Act and the CCPA (scheduled to take effect January 2020).

Shoptalk made clear that retailers of all sizes and scopes are embracing new technology with the hope of meaningfully responding to consumer expectations. We will continue to stay apprised of these tools in an effort to anticipate and proactively address areas of potential risk.

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