



## Jane Metcalf

Partner

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Jane Metcalf is a Partner in the firm's Litigation department. Her practice focuses on complex commercial litigation, with an emphasis on class action defense, false advertising, intellectual property, and litigation involving FDA-regulated products. Ms. Metcalf has defeated numerous consumer class actions at the motion-to-dismiss stage, and has obtained favorable decisions from both the Second and Ninth Circuits on key legal issues in class action defense. She also routinely represents clients in false-advertising disputes with competitors.

Ms. Metcalf also maintains a diverse commercial litigation practice beyond the false advertising realm. She is currently representing a leading financial technology company in a False Claims Act case seeking to expand the reach of Delaware escheat law, and has also successfully represented clients in employment, fraud, and contract matters. She has served as lead trial counsel for a consumer products company in an arbitration involving claims for breach of contract, and defended a leading financial services firm in an arbitration involving claims of defamation by a former employee.

Ms. Metcalf is ranked by *The Legal 500* as a Next Generation Partner in the area of Advertising Litigation. Additionally, she is recognized as a 2024 "Future Star" by *Benchmark Litigation*, and has been named to *Benchmark Litigation's* "40 & Under Hot List," recognizing practitioners who "are among the top young talent in their respective communities," for each of the past four years. Ms. Metcalf was also named to *Ad Age's* elite '40 Under 40' list, which recognizes influential people under 40 in the advertising, marketing, and media industries.

Prior to joining the firm, Ms. Metcalf served as a law clerk to the Hon. Paul G. Gardephe in the United States District Court for the Southern District of New York, and to the Hon. Raymond J. Lohier, Jr. in the United States Court of Appeals for the Second Circuit.

### **Representative Matters**

#### ***Class Action Defense***

Obtained dismissal of putative false-advertising consumer class action alleging that a best-selling soft drink was misleadingly labeled. Successfully argued appeal of the dismissal, resulting in a precedential Second Circuit opinion applying rigorous pleading standards to consumer protection actions.

Obtained favorable decision from Ninth Circuit on standing to pursue injunctive relief, reversing district court's certification of a multi-state class and resulting in dismissal of a multi-district class action litigation.

Obtained dismissal of lawsuit brought by putative public interest organization under D.C. Consumer Protection Procedures Act, claiming that consumer goods company had made misleading statements about public health issues.

Obtained dismissal of consumer class action alleging that a product's labeling misrepresented its sugar content.

Obtained dismissal of consumer class action alleging misleading labeling of flavors.

Obtained summary judgment on behalf of chocolate company in putative class action alleging misleading labeling of artificial flavors, after securing crucial deposition testimony from the named plaintiffs.

Obtained summary judgment on behalf of manufacturer in putative class action alleging that product packaging contained unlawful "slack fill."

Representing consumer products company in a series of related cases alleging that the company misstated the environmental impact of its operations.

Representing drugstore chain in putative class action alleging misleading marketing of prepaid gift cards.

### ***False Advertising/Unfair Competition***

Represented a household products company in pursuit of Lanham Act false advertising claims against competitor, resulting in a favorable district court ruling and culminating in settlement.

Represented leading food manufacturer in complex trademark dispute with competitor involving claims of infringement by both parties, culminating in settlement.

Successfully defended a pet food manufacturer against claims of false advertising by competitor.

On behalf of a cosmetics company, obtained appellate reversal of a district court order granting competitor's application for a 50-state injunction of sales of client's product.

On behalf of a broadband cable provider, defeated competitor's application for an injunction of disputed advertising.

### ***Complex Commercial Litigation***

Representing payments technology company in a False Claims Act case alleging failure to remit unclaimed property to the state.

Obtained dismissal of a Sarbanes-Oxley whistleblower complaint brought by former employee against a Fortune 500 media company.

Obtained dismissal of claims for wrongful termination and breach of contract, on behalf of international university.

Served as lead counsel to consumer products company in arbitration involving claims for breach of contract by a vendor.

Defended financial services firm in arbitration involving defamation claims by a former employee.

Pursued fraud claims against supplier on behalf of a nutrition company.

### **Admissions**

- U.S. Courts of Appeals, Second Circuit; Fifth Circuit; Ninth Circuit; Federal Circuit
- U.S. District Court, Southern and Eastern Districts of New York
- New York

### **Professional Activities**

SPEAKING ENGAGEMENTS:

- Speaker, "Crisis De Jure: Ethical Considerations for In-House Counsel in Product Recall Situations" and "Playground or Battleground: Examining Jurisdictional Trends in CPG Litigation," CPG Consumer Brands Legal Forum (February 27, 2024)
- Moderator, "False Advertising and Lanham Act Litigation Round Up," CPG Consumer Brands Legal Forum (February 24, 2023)

## Education

- University of Michigan Law School (J.D., *magna cum laude*)
  - Order of the Coif
  - Clarence Darrow Scholar
  - Associate Editor, *Michigan Journal of Race & Law*
- Yale University (B.A., *magna cum laude*)
  - Phi Beta Kappa

## Publications

August 26, 2021

**The New Consumer Class Action Trend: Corporate Character Attacks**  
*Bloomberg Law*

September 15, 2020

**Food Label Ruling Shows How To Make Preemption Stick**  
*Law360*