

## David S. Greenberg

Counsel

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### Areas of Focus

Litigation + Dispute Resolution | Advertising  
Disputes and Challenges | Commercial  
Litigation | Intellectual Property Litigation |  
Non-Competes, other Restrictive Covenants,  
Trade Secrets and Raiding

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### Overview

**Within David Greenberg's varied litigation practice, he defends retailers and media companies against class action cases alleging consumer fraud and deceptive marketing practices. He also defends and prosecutes false advertising and unfair competition claims and represents commercial and retail tenants in leasing disputes with their landlords.**

David leverages his litigation experience to help creative agencies and online media and entertainment companies craft agreements and contracts that reduce future litigation risk. An agile and adaptive advocate, he enjoys mastering new procedures and areas of the law to help clients minimize business interruptions.

When faced with a claim in court or arbitration, David seeks early resolutions that reflect his understanding of client needs and goals. He invests in learning their internal processes and approach so he can "think along with them" in drawing up potential solutions. Balancing zealous advocacy with level-headedness, David works to get clients what they want while preserving the possibility of future cooperation. If an early resolution is not possible, he draws on his significant courtroom experience to present impactful evidence and craft persuasive arguments that position clients for positive outcomes.

David has particular experience interpreting and applying arbitration and class action waiver clauses in online terms and conditions. He handles deceptive marketing claims ranging from "free-to-pay conversion" membership programs, to inadequate disclosures about online entertainment and media programs. In addition, David represents a range of apparel retailers, accounting firms and media conglomerates in landlord-tenant disputes.

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## Representative Experience

- Obtained dismissal of a putative class action against a media and home entertainment retailer alleging deceptive practices in connection with marketing and enrollment of customers in its loyalty program.
- Represented a major online content network in a pair of putative class actions that targeted the company's entertainment websites, alleging inadequate disclosures in the membership signup process. Negotiated favorable early resolutions for the company.
- Brought claims in arbitration on behalf of a major media and marketing services company arising from a New York City landlord's overcharges in connection with a lease's rent escalation clause. Reached a settlement that saved hundreds of thousands of dollars in escalation rent on the eve of the hearing.
- Represented an American fashion company in an expedited arbitration concerning the company's right to sublease one of its New York City retail premises to a first-class international "fast fashion" retailer. Arbitrator's award unequivocally confirmed the company's right to place its selected subtenant in the space, despite the subtenant's lack of status as a "luxury" retailer.
- Defended an ad agency against a claim by a former employee of a long-defunct advertising agency alleging that the company, as an alleged successor to his agency, owed him over \$1.2 million in unpaid retirement benefits. The court granted our motion for summary judgment and dismissed the claim, holding that a retirement plan administrator could not be held liable to pay benefits out of its own, non-plan funds.
- Defending a nationwide food distributor in a putative class action alleging deceptive practices in the packaging and labeling of its product. Filed a pre-answer motion to dismiss, arguing that the claims are preempted by federal food and drug packaging and labeling laws and that the named plaintiff does not meet the necessary criteria to bring most of its claims.
- Secured injunctive relief for a clothing retail company, whose operations had been significantly impacted by COVID-19, preventing numerous landlords from terminating the company's leases at various locations in the New York City area.

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## Insights + Events

### Alert

Natural Selection: NY Federal Court Dismisses "Natural" Personal Care Claims, Decertifies Class  
February 21, 2024

### Alert

For Compete's Sake! Delaware Court Declines to Enforce Sale-of-Business Restrictive Covenants  
December 15, 2022

### Event

Association of National Advertisers | Brand Activation Legal Committee Meeting Webinar  
April 21, 2022

### Alert, Balancing Compliance and Creativity in Regulated Industries, The Fine Print: Stay in Compliance without Losing Your Edge

You Can Believe It's Not Butter: NY Judges Dismiss "Butter" Class Actions  
December 6, 2021

### **Alert, Uptick in Consumer Class Actions as Online Purchases Grow**

Court Enforces Arbitration Clause in In-Home Services App Agreement  
October 11, 2021

### **Alert, Uptick in Consumer Class Actions as Online Purchases Grow**

“Grand Finale?” — Supreme Court to Address the Definition of “Automatic Dialer” Under the TCPA  
September 30, 2020

### **Alert**

Protective Covenant Considerations in the COVID-19 Era  
May 20, 2020

### **Alert**

COVID-19: As Cases Continue to Spread, Will Court Cases Begin to Spread?  
April 29, 2020

### **Alert**

New York State Implements Sick Leave for Employees Required to Quarantine or Self-Isolate By  
Government Order  
March 20, 2020

### **Press Mention**

Albany Business Review | FYE Owner Asks Court To Dismiss Lawsuit That Claims Customers Were  
Deceived  
January 22, 2019

### **Alert**

“Dialing It Back?” Federal Courts Weigh in on “Autodialers” After Appeals Court Strikes Down FCC  
Interpretation of TCPA  
June 20, 2018

### **Alert**

New Jersey Supreme Court Rejects No-Harm TCCWNA Claims, Dealing Blow to Consumer Class Actions  
Under the Act  
May 16, 2018

### **Alert**

No Harm, No Foul? Individualized Consent Issues Sink TCPA Class Action  
January 16, 2018

### **Alert**

Appeals Court Enforces Arbitration Clause in Hyperlinked Terms & Conditions  
November 2, 2017

### **Alert**

Possibility Defeats Practicality: Federal Court of Appeals Limits Class Action Defense Regarding Infeasibility  
of Ascertaining Class Members  
August 30, 2017

## Alert

Courts Begin to Rein in Scope of New Jersey Truth in Consumer Contract, Warranty and Notice Act  
May 10, 2017

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## Credentials

### Education

Fordham University School of Law (J.D., 2002)

- Member, *Fordham Law Review*

Brandeis University (B.A., *cum laude*, 1997)

### Bar Admissions

New York

### Court Admissions

U.S. District Court Southern District of New York

U.S. District Court Eastern District of New York

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## Associations

Member, American Bar Association

Member, New York State Bar Association

Member, New York City Bar Association

Member, Federal Bar Council