Proskauer

Rent the Runway Walks into the Litigation Spotlight

The Capital Commitment on **April 23, 2019**

There's a new unicorn in town, and this time, it isn't just another tech company. Rent the Runway, also known as RTR, is now officially valued at over $1 billion after its most recent funding round which raised $125 million.

The high-end rental clothing brand was launched in 2009 by female founders, including co-founder and CEO Jennifer Hyman. Rent the Runway's third and largest round of funding took place during Hyman's ninth month of her pregnancy term – a fact that surprises some and empowers all. The company has been sky-rocketing in value since it introduced its subscription rental service which now makes up 60% of the company's revenues. One of the best parts – the consumer base is 100% female.

Of course, with success comes attention, and not always welcome attention. The same week Rent the Runway reached unicorn status, LA startup FashionPass filed a lawsuit accusing Rent the Runway of monopolizing the high-end clothing rental market. In its lawsuit, FashionPass alleges that RTR conspired with other labels to demand exclusivity in the rental relationship. FashionPass's complaint alleges in "excess of $3 million" in damages and claims it is entitled to recover treble damages.

Regardless of the merits or eventual outcome of the case, one thing is certain – by reaching unicorn status, Rent the Runway transitioned to a platform that is now being watched very closely, including by regulators and competitors. This spotlight brings about a whole new facet of litigation risks. As we've previously noted, the SEC has carefully been observing the unicorn market since 2016, keeping a particular eye out for inflated valuations and compliance issues that often come with rapidly growing startups. And as RTR has now learned, private litigants are watching as well.

The continuously evolving events surrounding Rent the Runway, similar to those of other unicorns, serve as a useful heads-up for other rapidly growing companies. For private funds invested in soon-to-be unicorns, and in particular those that occupy board seats, it is prudent to be proactive and recognize that with impressive performance will come an inquisitive audience. Start early – be prepared before regulators or private litigants come knocking. Formulate a plan – which should involve a comprehensive review of insurance policies and an understanding of what they cover (and don't cover). And then execute – deploy a strategy that mitigates as much as possible the effect of unwanted attention on the operational aspects of the business that drove the company to unicorn status in the first place.

The growing pains that Rent the Runway is experiencing are neither unique nor insurmountable – unwanted attention is simply one of the costs of eclipsing such a lofty milestone. After all, unicorns are rare for a reason.

Related Professionals

- **Hena M. Vora**
  Associate
- **Mike Hackett**
  Partner