Bird & Bird

Retail Therapy:

Retail's AI Revolution: Opportunities and Pitfalls

2024

Transcript of Retail therapy Episode 10

Nicola	Hello and welcome to the Retail Therapy podcast – I'm Nicola Conway and I'm a Senior Associate in Bird & Bird's Retail & Consumer Team.
Evie	And I'm Evie Scott, I'm a trainee currently sitting in the same team. In today's episode: We're going to discuss the rise of AI in the retail and consumer space. We're joined by Shariqa Mestroni, Shariqa, would you like to kindly introduce yourself and a little bit about your role?
Shariqa	Hi everyone. I'm Shariqa Mestroni. I'm a Special Counsel in the Sydney team at Bird & Bird. I work closely with brands across the retail and consumer sector with a focus on intellectual property, consumer law and brand protection.
Evie	Shariqa, it's great to have you on the podcast. I understand that you've just spoken at the Global Sourcing Seminar in Sydney in June – can you share with us a little bit about what that entailed?
Shariqa	Yes absolutely. The seminar series was at the Global Sourcing Expo which is a convention that is focused on apparel, footwear, textiles and homeware subsectors. I co-presented with my colleagues, Jessica Laverty and James Hoy, who specialise in dispute resolution, data protection and privacy on the topic of generative AI in the retail sector. The reason we took a cross-practice approach to the topic is because AI laws and regulations touch on so many areas of the law: I spoke about some of the IP implications of using generative AI; Jess spoke about AI regulation, including how suppliers in Australia could be required to comply with the upcoming EU AI Act; and James spoke about how current privacy laws and regulations in Australia are pertinent for users of gen-AI.

In a nutshell, the rise of generative AI has presented a wave of opportunities for the retail industry which we've seen through numerous uses and applications, but it has also presented significant challenges for individuals and businesses. There are some really good strategies mitigating the risks, which are also set out in an article we co-authored following the presentation that's on the B&B website. |

Nicola	This all sounds great and if anyone wants a copy of that, just reach out and we can send that over. And I do want to make sure that we circle back to talk more about those risks and opportunities that you mention. But first– and this is honestly mostly for my own benefit! - I wonder if we could take just one step back and ask you to walk us through the basics of what generative AI actually is?
Shariqa	Good question. Let's take a step back and consider AI first, of which generative AI is a subset. There is no single, unified definition of AI but taking one of those definitions, the International Organisation for Standardisation (ISO) defines it as an *engineered system that generates outputs such as content, forecasts, recommendations or decisions for a given set of human-defined objectives.* • As I mentioned, generative AI is a subset of AI. • It includes tools such as ChatGPT, DALL-E, YouChat. • Australia's Chief Scientist Rapid Response Information Report which was recently published distinguishes gen-AI from AI as follows: *Whereas conventional AI has been largely analytic, generative AI takes its name from its capacity to generate novel content, as varied as text, image, music and computing code, in response to a user prompt.* • So it essentially deploys algorithms to create new content by following user prompts.
Evie	So as a really basic general summary, it's learning from data and generating original content?
Shariqa	Exactly – it works by using algorithms to analyse patterns and relationships within existing data, namely training data. • So there are some key elements involved: training data, an AI model, user prompts, and AI outputs. • The AI model is trained on training data, which is typically large datasets. In this way, the AI model learns complex patterns. When a user enters a prompt, the AI model uses the training data and its learnings to generate outputs. • Common types of generative AI models include Variational Autoencoders, also known as VAEs, Generative Adversarial Networks (GANs), and autoregressive models. • Each model has its own unique architecture and training procedure, but they all aim to capture and reproduce the distribution of the training data.
Evie	Wow – that all sounds very technical! Can you expand a bit on how these models work?
Shariqa	Sure – let's take GANs for example: • They consist of two neural networks – a generator and a discriminator. • And when I talk about a neural network, these are really the backbone of Gen Ai. They provide the computational framework for learning complex patterns in data and generating new content.

	• So the generator in the GAN generates new samples, like images and text, while the discriminator evaluates the authenticity of these samples. • As mentioned, a key element in generative AI models is training. So, through training, the generator aims to fool the discriminator and the discriminator aims to distinguish real from fake samples. • I should add, the training data that is input during this period is crucial. The quality, quantity and diversity of the training data directly impacts the model's ability to learn and generalize. So models trained on diverse and representative datasets are more likely to generate realistic and diverse outputs. • It avoids errors that AI models make such as "hallucinations" or bias in the data outputs.
Evie	Thanks for that great overview, Shariqa, that's been really helpful in explaining a bit of background to the world of AI. I'm hoping now that we have got to grips with the essentials, we can explore how the retail market is interacting with gen AI?
Shariqa	• Gen AI is potentially one of the fashion industry's most transformative technologies. And it's a situation where the cart has bolted before the horse in some ways – the cart being the industry and the horse being laws and regulation. • McKinsey commissioned a report at the start of the year titled, State of Fashion 2024 in which it surveyed global fashion executives. They found that 73% of respondents said gen AI will be an important priority for their businesses in 2024. But another statistic that I found was interesting in the report was that only 5% of those surveyed believed that they had the capabilities to fully leverage generative AI in their business. This suggests that fashion companies, like many other industries, are not yet fully capturing its value in creative and business processes. • There's also clearly a huge gap in the level of understanding and skills required to fully leverage AI. • Despite this, we are still seeing a number of use cases in the retail sector that demonstrate how gen AI can add value. These examples include use in product development and innovation (writing briefs for a product collection, or generating mod boards and visual imagery), supply chain and logistics (augmenting real-time demand forecasting), marketing (hyper-personalise loyalty programmes), store operations and sales and customer experience. • On a very practical level, examples you and I might have come across are online shopping assistants that pop up to ask if you need any help or those that provide customised product recommendations. • One of the most common use cases in the market we've seen is companies using gen-AI to help in write product descriptions for websites or copy editing.
Nicola	That's interesting you say about copy editing because I read recently that the company, Adore Me have been partnering with a company called Writer which is a generative AI platform that's basically a big language model that can automate content creation. So Adore Me is seemingly using Write is that Adore Me to write its product descriptions, press release, Google search ads,

	and all that sort of stuff. Which I presume is really efficient in terms of human time and human cost savings.
Shariqa	This is the same as Shopify, who has also introduced a gen AI tool called Shopify Magic. The tool allows merchants to automatically generate product descriptions, edit images and suggest personalized FAQs. More recently I understand, Shopify has announced it will be releasing a generative AI chatbot that will be able to fill out forms such as 'create a student discount for 10% for back to school in August', write content, and even put items on sale.
Evie	And sort of building on that conversation about in technology and gen AI tools, I don't know if you've heard of Step One? It's an underwear brand that is using AI technology across its marketing processes which has resulted in strategic cost cutting. The team at Step One uses programs such as ChatGPT and AI photo editing via Photoshop, and these tools allow designers to reduce their workload, cutting down marketing output from days to minutes! The team also uses AI to create new advertising based on past successful campaigns. The AI tool is able to reimagine an old advert almost instantly and this has resulted in large reductions in inventory and advertising spend – in 2022-23 Step One spent $23.6 million in advertising and marketing compared to $32.08 million in 2021-2022! What is also interesting to note is that Step One is now looking to integrate AI into email marketing. So, by using the AI marketing software, Klaviyo, Step One can add to emails key customer segments generated via AI-driven data analysis. This would mean that certain groups of customers would be sent ads for products they're interested in, down to things like underwear quality or quantity. The company has also recently revealed plans to incorporate AI tech into stock forecasting and inventory management. This will allow them to forecast product demand based on historical sales data, and delivery times.
Nicola	I think it's really cool that it's becoming more commonplace for companies to use AI in their business-as-usual operational tasks.
Shariqa	Yes, that sounds right. We've also seen brands being able to lean on gen AI for larger scale and one-off events. We've seen this quite recently with Ganni. • At its Spring/Summer 2024 runway show, Ganni used gen AI to create an installation that allowed guest to ask questions and receive answers. • The idea came from Ganni's co-founder and creative director, Ditte Reffstrup who wanted to create a 'kinder, more thoughtful AI'. • Ganni worked with digital artist Cecilie Waagner Falkenstrom and her studio Artificial Mind to create a special AI that uses a similar model to ChatGPT. • The AI was trained on data from the brand as well as online interviews with social media comments from fans and influencers. • Guests at the show could interact with the AI by asking it a question and receiving a response tailored to Ganni's view of the world (which is aligned with the Ganni community and their varied interests from sustainability to socialising).

Evie	I think there is something to be said for using gen AI as an artistic tool. It provides all these possibilities, but the artist is still able to define and construct a creation tailored to what they want. • Another brand that has done this, and to add to Shariqa's example, the luxury label, Casablanca, used AI to create a campaign for its Spring/Summer 2023 'Futuro Optimisto' collection. • They partnered with an AI artist, Luke Nugent, and used the image generator Midjourney to produce campaign images. • What was really interesting though was that those involved in the campaign said that using AI didn't actually save time or on processes, e.g. creating storyboards for the campaign. But it did produce other efficiencies such as not needing to call models from a run sheet or scout for shooting locations. • The art director at Casablanca, Steve Grimes, said that creating images using AI is still very much about planning and creativity – there is still an artistic vision behind the campaign. The AI tool changes how brands address hiring models and scouting locations.
Nicola	That's a really good example because I think a lot of the time when we talk about implementing AI, people presume the AI will *replace* the human input. But actually in many cases, and as you've both just spoken to, AI isn't replacing humans its actually just being used to provide inspiration to make the human output better – or maybe - broader. In fact I've heard from a couple of our fashion clients that AI is super helpful to inspire fashion designers as you mention to experiment with rapid design mock ups and iterations and also to compile mood boards that can draw from really broad sources outside of the immediate team basically for a wider inspiration base.
Evie	100%. Well it sounds like gen-AI really does offer a plethora of opportunities to build new capabilities across retailers. In line with that – Sharqia - are you seeing an increase in funding for AI-focused companies?
Shariqa	We certainly are. A huge amount of funding has gone into gen AI-focused start-ups. For example, equity funding for gen-AI start-ups reached $14.1 billion in the first half of 2023, compared with $3.5 billion in 2021 and $2.5 billion in 2022. These figures suggest we will see an increased number of opportunities for retailers and fashion companies to fill gaps between their gen-AI goals and the reality of where their technology currently is.
Nicola	Wow, those are impressive numbers. Ok well let's shift a little bit more legal here – because I'm interested in knowing Shariqa, how does such rapid and widespread innovation affect your IP practice?
Shariqa	Well, the difficulty is that there isn't a general consensus on how legislative bodies are approaching IP protection and enforcement involving AI. This can be really confusing not only for brands but actually for lawyers too! When we look at who owns IP in the output generated by AI, is it the person/entity that created the AI model? Or the person/entity that entered the prompts? Or is it the AI tool itself? In Australia for example, it was settled last year that an AI tool cannot be named as an inventor of a patent. Similarly, under the Australian Copyright

	Act, although this question has not been decided in Court, it would not be possible for AI to be considered the author or owner of a copyright work. This is because an "author" must be a qualified person at the time the work was made, namely Australian citizen or resident or a body corporate, and they must have exerted "independent intellectual effort" in creating the work. So even if we take out the AI tool from the equation when it comes to patents and copyright, there are still a lot of questions which need to be assessed on a case-by-case basis. Then there is also the issue of who is liable for AI output that infringes IP? This is being tested in many courts – in the US, UK and China – so we'll have to watch this space before any jurisprudence emerges from the courts.
Evie	OK –so lots to keep in mind in the IP space. There are also some updates on privacy reforms and the intersectionality between technology and data protection concerns so perhaps we should ask one of our data protection colleagues to join us on a future episode to dip into that as well.
Nicola	100%, great idea. Right we've covered quite a bit here so let me try and re-cap - I think the overarching takeaway has to be that innovations like Generative AI do necessitate a bit of horizon scanning so that retailers are well prepared to quickly flex and pivot to ensure that they're able to navigate the legal landscape as it continues to change in a legally compliant way.
Shariqa	I second that sentiment. In terms of tips for progressing in the current landscape, I would say that: • Organisations need to deliver early impact whilst laying the foundations for future scale – the pace of expansion is likely to depend on technology and talent readiness, which will need commitment to new ways of working and investment • According to McKinsey forecasts, companies will see the largest profit gains from gen AI in product design and assortment, followed by content-focused marketing and customer experience – these are areas organisations should look to target. • And organisations who don't have the in-house resources to develop their own AI models can fine-tune third-party foundation models e.g. Open Ai or Google, or they could deploy specialised applications that build on existing foundation models but tailored to specific uses. But they should carefully review terms and conditions of AI tools to be aware of and mitigate any risks. • And a final point: Businesses and employers should protect themselves by establishing robust AI policies for their employees with clear prohibitions and guardrails. Employees should have regular training around the use of AI tools in line with that policy. So, it's no good just having a policy and putting it in the cupboard, you really just need to make sure the employees constantly understand, and the policy evolves with the AI tools evolving as well. Good record keeping such as documenting AI prompts is also super important.
Nicola	I think those are brilliant takeaways – thanks Shariqa! Ok…it's that time…Let's close the episode with a fun, light little question –Shariqa and then Evie, what's something that you have read or listened to recently that you have loved?

Shariqa	So something that I kind of purchased as an audiobook and its actually kind of aligned with this tech topic a bit. I listened to recently on Audible was Gabrielle Zevin's "Tomorrow, and Tomorrow, and Tomorrow". The narration was by two people which I think brought the characters and story alive, as its essentially about three friends. The reason I say it's on the tech theme, is that the novel is essentially set in the 80s and spans 30 or so years when two kids grow up together playing and then designing a videogame. I'm by no means a hard-core gamer but as a casual gamer the novel gave me an interesting insight into that world, even if its fiction and there were so many layers to it. But the reason I loved it was because ultimately, it's a story about love and friendship when you strip it right back.
Evie	I've actually recently read that book too and I really enjoyed it, its really good. And so mine is like a similar vein to Shariqa. I'm a really big reader so I'm always looking for the next best book and I recently bought a book called 'Brotherless Night' by V.V. Ganeshananthan and it actually just won the women's prize for fiction. Set in Sri Lanka during the civil war and it follows a family whose lives are just turned upside down by the war. Its really an unforgettable story of a country and a family. Two of the brothers are in the Tumble Tigers, one of the daughters is trying to become a doctor and it really evoked such strong emotions in me, I even cried at one point, and I just couldn't put it down, so I'd really recommend if you're looking for a great book.

And so Nicola, just returning to you, what's something you've bought recently that you've loved? |
| Nicola | Well I have a coffee that you can both enjoy while you read and listen to your respective books. Nespresso have a "new" flavour called vaniglia and I'm saying new in speech marks because I think it could be a reinvention of an old flavour, they had which was called vanilio which they discontinued, and they replaced vanilio with one called vanilla éclair which was very nice but not as good as vanilio. And now we have vaniglia which I think…is just as good if not better than the original vanilio. So I'm very pleased. There's nothing worse than when a brand discontinues something that you just love so much. |
| Evie | Yeah, absolutely, I'll have to try that one because I remember absolutely loving the vanilla eclair flavour so that's a good recommendation for me.

Alright that's the end of our episode – thanks for joining us! If you'd like to join us for more Retail & 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! |

Thank you

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