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The Trademark Lawyer

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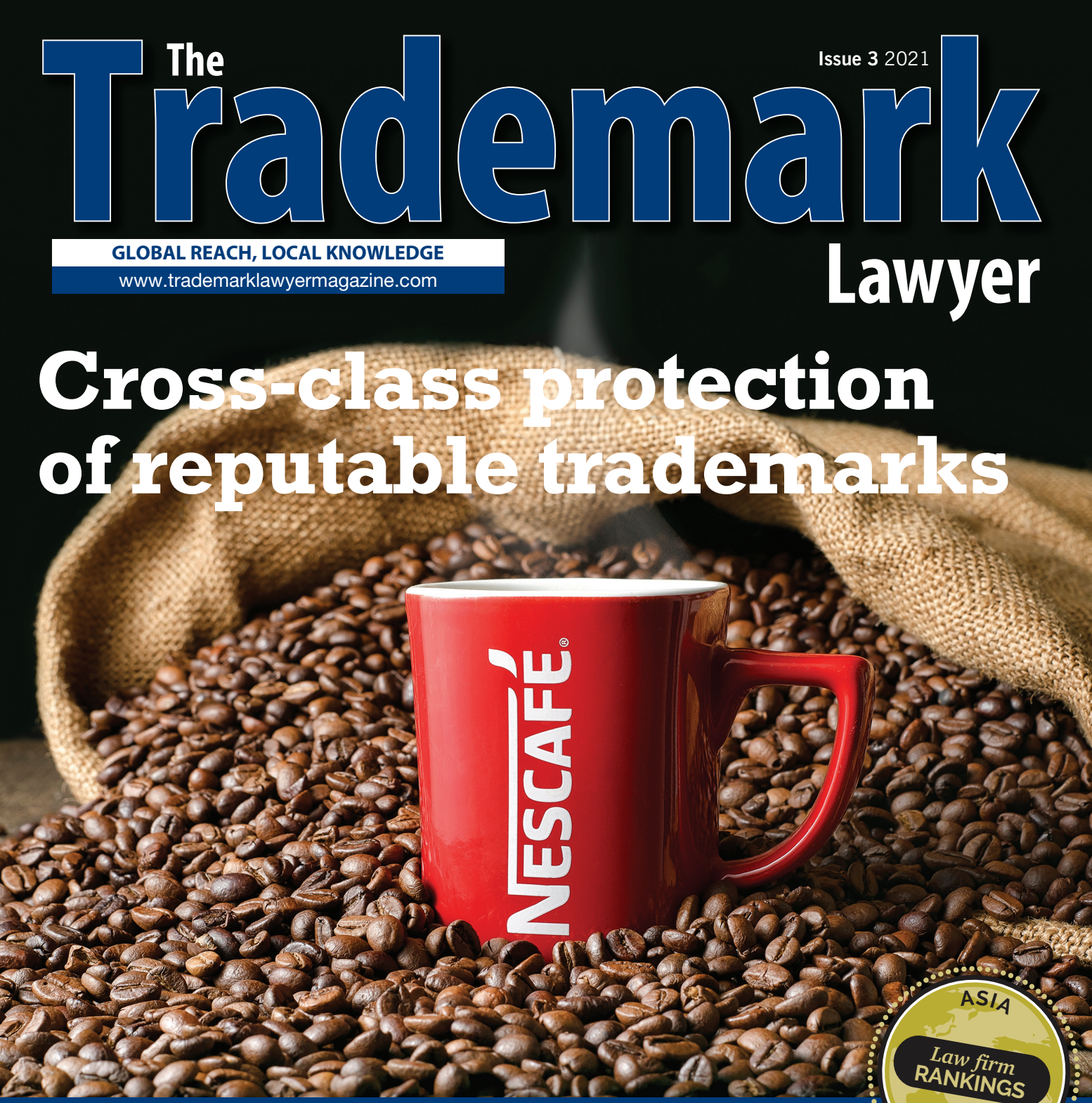

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Diversity, equity, and inclusion with Suzanne Wertheim. Chapter 1: an anti-bias vision

In this six-part series Dr. Suzanne Wertheim, of Worthwhile Research & Consulting, talks to *The Trademark Lawyer* about diversity, equity, and inclusion: what it means; the current challenges; DEI in law; gender bias; and what we can all do to improve.

Dr. Suzanne Wertheim is a national expert on language and bias. A former professor of linguistic anthropology, she began her research on language, culture, and diversity at UC Berkeley, where she received her Ph.D. After faculty positions at Northwestern, University of Maryland, and UCLA, she left academia to found Worthwhile Research & Consulting.

Dr. Wertheim is a thought leader in the Diversity, Equity, and Inclusion space. In addition to educating thousands of college students and workshop participants, Dr. Wertheim has been an invited and keynote speaker throughout North America and Europe, presenting research on language and gender, cross-cultural encounters, and anthropology and artificial intelligence. She has done fieldwork with speakers as diverse as Tatar nationalists in the former Soviet Union, Native Americans in central California, and comedians in Los Angeles. Dr. Wertheim now applies academic knowledge and expertise to real-world problems in the workplace, including legal workplaces.

Suzanne kindly spoke with *The Trademark Lawyer* about her DEI work and research, which will be featured over the next six issues.

Dr. Suzanne Wertheim

Can you tell us why you decided to start your own business and the vision you had in mind?
I was a professor in a field called Linguistic Anthropology, which most people have not heard of, so they think it's very exotic or esoteric. But it is actually studying one of the most foundational human things: people talking, the social meaning of their language, and how their language relates to the world around them.

I was teaching classes and I was changing how people saw the world: that was my goal, and it was working. My undergrads would email me years after taking classes and say, "Professor Wertheim, I still remember this thing and it came in handy today." So, I began to feel frustrated that there was so much useful information that was locked behind academic walls. It felt very unfair that you had to go to an elite university, because that's where most linguistic anthropologists were back then, and you had to happen to take a class like mine in order to get information that you could use for the rest of your life to better understand the world around you.

The other thing was that Los Angeles, and California generally, is very diverse and I had students, who were quite stellar, who went out into the working world and encountered bias that for some reason I hadn't been expecting, even though I myself had encountered it. And their stories were upsetting.

So I thought that, since I was good at intro-level teaching, it would be more useful for me in my goal of making the world a better place if I switched over to workplace training. I could start by taking my research knowledge, along with the teaching tricks I'd figured out, and build workshops for companies. I could create training that would guide people to better understand their actions, and to help them better align their actions with their intentions. So people like my former students, who were amazing, could go into less-biased workplaces and thrive.

One parallel to how we are with bias is our posture. Sometimes we have this idea that we have good posture and then we see ourselves in a photo or video and it's actually terrible! We're all hunched over from all this computer work. We do that a lot with our talk and actions too: we have this idea that we're getting certain messages across because we know them to be true in our heads, but we're actually not doing a great job of it and things aren't landing the way that we want.

So, I thought, 'what if I could help people and educate them so they can make sure that they're doing a better job, that their good intentions are actually becoming good impact?' It's already almost 10 years ago that I left UCLA and I started my own research and consulting company.

Can you explain to us what anti-bias training is?

A lot of companies have been realizing that they have not been doing as good a job as they should be. In the US, a lot of reflection started in May and June 2020. Some people refer to this as "after George Floyd," and many of us in the field are calling it "the Great Awakening." People were stuck at home in the pandemic, using video to connect with their family, friends, and loved ones. And suddenly, here was a video of George Floyd being killed by the police. It made it hard to ignore for so many people, and suddenly there was protests around the country, calling for real justice, and the end of harmful and unfair treatment of Black people. So this landed on companies as well, who started to feel pressure to think about unfairness and bias in terms of their employees, in terms of their client base, and in terms of really seeing people and making their experience equally good across all different identity groups.

I call my workshops "anti-bias training." There are a lot of different names for this kind of work. In the US, most common right now is Diversity, Equity and Inclusion, or DEI. Some people include the word 'belonging,' and others the word 'justice.' I decided to call it anti-bias training because I realized I was dealing with a lot of cognitive biases as well. And because, to be frank, sometimes you have to convince people that this work is necessary. That it isn't just a nice-to-have, but is actually a have-to-have. One real obstacle is that, in general, the upper echelons of companies are people who haven't had to deal with pervasive, ongoing, everyday bias. So they don't feel it the same way that people at lower levels, in different groups, do.

I also like to say anti-bias training because bias feels like a concrete problem that people know exists. And they know that bias is bad, so they understand they need to devote time and energy into anti-bias work.

Let me tell you about the goal of anti-bias training. I did a lot of research on: what is the best possible workplace culture? What do the people who teach business goals or organizational culture or organizational behavior see as most important and best practices? I used an anthropological lens, and I came up with some very foundational human principles which I think are actually true for all groups of belonging, whether it be family, friend group, a band, your organization, your law firm, your company, etc. I call it the optimized workplace.

"I decided to call it anti-bias training because I realized I was dealing with a lot of cognitive biases as well."

Basically, it's where everyone feels seen, heard, and valued. Where people are able to make real contributions and aren't being blocked. It is where people feel like they belong.

And in the optimized workplace, people have high levels of psychological safety. So, you're able to admit to a mistake and create a course correction. And you're able to point out somebody else's mistake, and give them clean and useful critical feedback. You can have dissent and discussion without the opposite of psychological safety, which is a highly toxic workplace where you feel unsafe all the time. Very frankly, there are a lot of people that are stuck in workplaces like that. Anti-bias training is one way to go into a toxic workplace and at least try to educate people on how to make it less toxic.

What can be put into place in the workplace to facilitate diversity and inclusion?

This is a huge question. It's seriously huge. And the people who work in DEI are constantly collaborating, sharing information, trying to work out best practices.

From an anthropological perspective, I will tell you that there's no one-size-fits-all strategy, because groups of people end up with their own cultures and subcultures, and this includes groups of people who have come together to work at a law firm or some other kind of organization. But there are some universal things. Maybe it's because I come from an educational background, but I do see education as one of the first and foremost ways to facilitate diversity and inclusion. What I've learned is people come to me and they're like: I want to make a plan; I want to implement the plan; I want to move the needle. And I'm like: So, to make this plan, do you even have enough people who can accurately identify bias? Do you have people who have a vocabulary that lets them productively talk about bias? No? Then you are setting yourself up to fail! Creating the plan isn't step one. It's step three. Step four is implement the plan. But step one, where we begin, is educate people to see and understand bias, and to learn how to do real perspective taking. Because our lived experiences are so different that it trains us to see the world differently.

I'll give you a very linguistic example: in grad school, I learned about a tribe in South America where their verbal grammar changes depending on the phase of the moon. They use a different suffix if the moon is full, if it's new, if it's waxing, or if its waning - this is just part of their understanding of the world. These are people

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who pay attention all the time to the phases of the moon, whereas the rest of us don't have to do it.

A lot of people have lived lives that have made other people's experiences invisible to them, and it often means that bias doesn't feel real. What I find is that there are a lot of people for whom this feels politically correct or whimsical. Or they think that people are being oversensitive. I find that many of the people with these judgments come from a place of sincere misunderstanding, along with a lack of knowledge. So in my introductory anti-bias training, I work to educate people so they start to see: here's what bias looks like; here are the frameworks of bias; here are the ways it shows up; here's what to look for.

Another problem is that there is a lot of terminology that I think is quite accurate but doesn't lead to good results when you're trying to bring awareness of bias. If you tell somebody, 'that was racist', 'that was sexist', or 'you're racist', 'you're sexist' - it may be true, but you're not going to get anywhere. They're just going to get defensive, feel attacked, and shut down. I think it's very important to have vocabulary that makes it easier to have these conversations.

People who are resistant to DEI work will often say, "I don't want to lower the bar," when the topic comes up of diversifying a candidate pool for new hires and bringing more diversity to an organization. For example, "You say it's not good that all our engineers went to Stanford and we need to get more non-Stanford people in here, but we don't want to lower the bar." It's really common to hear, especially if there is a goal of bringing in more women, of any race, or people of color. It's terrible logic, and suggests that by looking for somebody who isn't in the dominant group, you're going to get someone who is not competent or not qualified. It's a dangerous association and link. So, with this as a common background, I like to joke that I DO want to lower the bar. But only in the sense of lowering the bar for talking about bias. Because that bar can be really high. People are really scared of saying and doing the wrong thing, of looking stupid, of being accused of being a bigot or racist or sexist. So one of the most useful things we can do is get people to a place where they feel comfortable talking about things, and where they understand that they're going to make mistakes.

Once you've gotten people to a place where they can identify and discuss bias, it's time for the next steps. Then you must move to systemic action plans, and make sure there is accountability for those action plans. For example, look at work assignments: how can you make work assignments equitable? In law, gender bias and racial bias is so profound when it comes to distribution of work assignments. I hear so many stories where some people are taken under a senior person's wing and get plum assignments, but others struggle to get good work. And gender or race are pretty clearly playing a role. Also, how do you make sure that promotions are equitable? Again in law, this is horrifically bad – all you have to do is look at what the results are! What are the numbers for who starts out at the bottom rung and who makes it to the higher levels? The numbers speak for themselves. And then we can end up with what we call a tautology, which is basically "well it's this way because it's this way." So people end up thinking something like, "well if it's all white men at the top of law firms it must be because they're the best." And this bias feeds into hiring and work assignments and promotion decisions, and it becomes this repeating cycle. How do you break that cycle? By looking, very scientifically, at the little distortions that happen. These distortions make it so that some people have a terrible headwind that is slowing them down, while there are other people with a tailwind that keeps on pushing them along. They may be doing good work but they've got work + tailwind. So we need find the circumstantial stuff and make it so that that tailwind and headwind is the same for everyone. And to make things more equitable, we also need to look for the people that have pushing into a headwind for some time and get them back in a more appropriate and fair position. It's a serious and lengthy process, and it requires many small, dedicated actions and iterative fixes.

Join us in *The Trademark Lawyer* Issue 4 for Chapter 2.

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