

Advertising Review, Production and Media

Any given piece of marketing content, regardless of its intended media, is the end product of dozens or even hundreds of legal compliance and contractual details — from intellectual property issues and product claims to talent and license agreements — all of which must be ironed out before the content can run. For a brand — or its creative agency — the legal vetting of content is a crucial step in the dissemination of marketing materials, and it must be done in a manner that protects the brand and agency from both financial and reputational damage.

Our attorneys have deep historical knowledge of the legal and business requirements involved in the creation and production of advertising, marketing and promotional content. Our clients depend on us to review and clear their marketing materials as well as draft and negotiate applicable agreements. We help to keep them safe from third-party claims relating to intellectual property infringement and to stay compliant with all applicable “truth in advertising” laws. As today’s marketing environment grows increasingly frenetic — with new content turned around in hours as opposed to weeks or months — we are uniquely suited to provide the necessary assistance, even on accelerated schedules.

Giving the Green Light

We review the advertising, marketing and promotional materials of our clients, seeing to it that every project has its legal and regulatory house in order prior to greenlighting production. We ensure all claims are substantiated, all rights secured, all releases and licenses obtained. We advise on the complexities involved in music clearances, and we negotiate necessary licenses to ensure that our clients’ productions are not subject to legal challenges. We are also adept at all facets of engaging and managing talent — from major movie stars to social media influencers to “man-on-the-street” testimonials. We are plugged into the ever-evolving obligations imposed on signatories to the SAG-AFTRA Commercials Contract, and we routinely strategize and consult with our clients to ensure they are engaging talent in accordance with applicable union requirements.

Claim Substantiation

The substantiation of marketing claims can be confusing and complicated. We work to ensure that our clients have a reasonable basis to make the claims they want in their marketing materials. Whether our clients are making complex claims relating to medical devices or the health benefits of drugs, or engaging in sales “puffery,” we give them confidence that their claims won’t be challenged.

Negotiating Production and Other Related Agreements

Behind every advertisement is a wide range of agreements — with production companies, talent, music licensors, rights owners, media companies and many more — each of which must be negotiated, drafted and executed. Clients rely on our deep experience with all these agreements to make sure their interests are protected at each stage of production.

Negotiating Master Services Agreements

Our attorneys are instrumental in creating and negotiating master service agreements between advertising agencies and their clients, whether these are for one-off projects or for global multiyear agreements covering all aspects of marketing, advertising, public relations, media buying or branding. Our efforts are invariably geared toward helping our clients market their products as aggressively as they see fit, while remaining safely compliant with all contractual and regulatory obligations.

Handling Media Sales, Programmatic and Media-Related Issues

Our clients are constantly entering into contractual arrangements that address a broad array of media-buying issues, many involving digital and new media platforms. Whether those clients are media-buying agencies, advertisers, publishers, demand-side platforms (DSP), supply-side platforms (SSP), other real-time bidding (RTB) technologies or virtually any other entity in the ad tech ecosystem, we regularly draft their contracts for online media buying. We help them determine their legal responsibilities in this complex environment, including their obligations regarding the data flowing into and out of their platforms. We also advise on any number of more-traditional media issues, including those relating to payments liability when multiple parties are involved in the deal as well as more traditional media liability issues involving intellectual property rights and broader regulatory compliance.

Representative Matters

- Assisting a growing media agency with its advertising work for a leading global financial institution, including representing the agency in its branded content development and production agreements with major online content publishers.
- Advised a major automobile company in developing and implementing a marketing strategy for online pre-sale and reservation programs to promote the launch of new product lines. Routinely provided guidance for structuring and marketing retail sales events, including financing, lease, and cash-back offers, and special promotional programs, including limited offers, cash-back initiatives, contests and sweepstakes, to ensure compliance with appropriate state and federal laws.
- Negotiated and drafted complex agreements relating to the joint venture between a brand activation agency, a multinational media and digital marketing communications company and a music festival for one of the highest profile and highly anticipated music events in the world.
- Represented an advertising agency in negotiations with SAG-AFTRA in the use of union talent engaged by Commercials Contract third-party signatories in order to protect the rights of non-union advertising agencies and their clients and to have more control over the SAG-AFTRA productions in which they are engaged. Convinced SAG-AFTRA to remove the offending provisions which led to a letter of adherence enabling the agency to maintain involvement in SAG-AFTRA productions.
- Advised one of the world's largest media buyers on the use and implementation of artificially intelligent bots for marketing purposes and for purposes of automating more of the media buying process, as well as privacy risks and related consumer disclosures arising out of the use of artificial intelligence.
- Negotiated a global PR agency's talent agreement with an A-list celebrity to create and promote a new dance challenge on social media benefitting the philanthropic efforts of the PR agency's consumer goods client. Helped our client with challenging production issues in the middle of the pandemic and navigated a thicket of intellectual property questions to ensure a successful campaign.

