

## Recent Entertainment and Media Representations

- We represented **Film Finances, Inc.** in an arbitration against Fortis Bank concerning the financing of Spike Lee's latest film, *Miracle at St. Anna*. Fortis Bank claimed that the film did not comply with the financing contracts because it was too long and did not conform to the approved screenplay. We proved that the running time requirement had been waived and that the film was based on the approved screenplay. The arbitrator awarded Film Finances declaratory relief, dismissed the cross-claim brought by Fortis, and awarded Film Finances its attorney's fees and costs.
- We represented **The Walt Disney Company, Executive Producer Dana Owens (p/k/a "Queen Latifah"), screenwriter Jason Filardi and various independent producers** of the hit comedy film "Bringing Down the House" (starring Steve Martin) in a long-running copyright infringement lawsuit filed by an aspiring screenwriter. Along the way, we obtained published summary judgment rulings dismissing all claims against our clients, including copyright, Lanham Act and fraud claims relating to the final motion picture as well as similar claims relating to draft screenplays created during the development of the film. In addition, we also defeated countless motions filed by the plaintiff, including one seeking to enjoin the network and cable premieres of the movie and another challenging the propriety of a single firm jointly representing multiple defendants in such cases to promote efficiency and reduce legal costs.
- On behalf of client the **Academy of Television Arts & Sciences**, we obtained a permanent injunction and substantial attorneys' fee award from a three-judge arbitration panel preventing its sister organization, the National Academy, from improperly creating new Emmy® award categories to recognize user-generated content and programming for broadband distribution and new media platforms like iPods, BlackBerries and cell-phones. We then successfully defeated several attempts by the National Academy to challenge and vacate the award in the New York courts.
- We successfully represented legendary super-agent **Ed Limato** — whose clients include Denzel Washington, Mel Gibson, Steve Martin and Richard Gere — against International Creative Management in a widely-publicized arbitration victory releasing Mr. Limato from an employment contract that would have forced him into retirement and led to the loss of his client base.
- We successfully defeated a lawsuit seeking to enjoin **Activision's** sales of its phenomenally popular "Guitar Hero" videogame, sought by members of the '80s

rock band "The Romantics," who asserted that the use of their signature song "What I Like About You" in the game violated their rights of publicity and constituted an implied endorsement. *See The Romantics v. Activision Publishing, Inc., et. al.*, 532 F.Supp. 2d 884 (E.D. Mich. 2008). We later secured the complete dismissal of the suit on the merits, effectively validating the business model underpinning the billion-dollar "Guitar Hero" franchise. *See* 574 F. Supp. 2d 758.

- We obtained "walk-away" resolutions of implied contract, copyright and trademark claims filed against **the producers of the reality television show "American Inventor."**
- We represented **the producers of "American Idol"** in a dispute over the use of the brand "Reading Idol."
- We represented film producer **Robert Cort** in a three-week jury trial resulting in a verdict finding breach of contract and fraud against a hedge fund. Our client received full compensation for all damages plus an award of punitive damages.
- We won a jury trial on behalf of the **Academy of Motion Picture Arts and Sciences** to enforce the contract by which the Academy grants its coveted OSCAR<sup>®</sup> statuettes and to enjoin their sale by the heirs of Mary Pickford.
- We defended **Paramount Pictures, DreamWorks and Ben Stiller** in an action in which plaintiffs contended that "Tropic Thunder" infringed upon their 2000 screenplay, "S.N.A.F.U." Following depositions during which we elicited key admissions from the plaintiffs, they withdrew all their claims in exchange for nothing other than our clients' agreement not to seek attorneys' fees.
- We represented **DreamWorks Animation SKG** in an idea misappropriation action brought by Vertigo Entertainment regarding the animated film in development "How to Train your Dragon."
- We are currently representing **Alliance Atlantis Releasing** in the district court and before the International Film and Television Alliance in connection with claims against Bob Yari Productions and its affiliates arising from the British, Canadian and Spanish distribution of approximately a dozen films.
- We represented **Elvis Presley Enterprises** in copyright litigation and enjoined distribution of a 16-hour Elvis Presley related DVD collection and obtained a multimillion dollar damages award.
- We represented **Time Warner Entertainment and HBO** in a copyright suit challenging the originality of the popular hit series "Six Feet Under." We obtained summary judgment dismissal of copyright and trademark infringement claims valued in excess of \$50 million, which was later affirmed by the Ninth Circuit in an off-cited ruling articulating how copyright claims should be evaluated in the context of

television and film properties. *See Funky Films, Inc. v. Time Warner Entertainment Co., L.P.*, 462 F.3d 1072 (9th Cir. 2006).

- We represented **Fox Entertainment Group, Inc. and FremantleMedia** in litigation with a New Zealand-based production company over the format of “The Complex: Malibu,” a home renovation reality competition series. After we obtained an early stay of discovery and moved for summary judgment on the ground that generic elements of television programming are not entitled to copyright protection, the plaintiff withdrew its complaint with prejudice.
- We successfully defended a **prominent entertainment lawyer** against malpractice claims seeking damages in the tens of millions of dollars arising from the alleged failure to advise a record label client about a purported “right of first refusal” in a major artist deal. After a round of intensive depositions, we secured the outright dismissal of all claims for lack of standing and legal insufficiency.
- We were retained shortly before the start of a jury trial to defend **Fox and the producers** of the hit film comedy “Dodgeball: A True Underdog Story” in a copyright and idea theft suit filed by two screenwriters who managed to survive summary judgment. Following successful *in limine* motions to restrict plaintiff’s potential remedies and preclude their proffered “experts” from testifying, the case was resolved on favorable terms through mediation.
- We represented **Corbis** in an substantial enforcement action in Florida against Ukrainian and other foreign professional copyright pirates, securing a TRO and preliminary injunction shutting down several global operations resulting in a judgment in excess of \$20 million against several defendants.
- We represented **Viacom and MTV Networks** in a copyright suit alleging that the music bed of certain MTV special programming infringed numerous copyrights allegedly owned by a former well-known rap artist. After we established that the plaintiff was not entitled to statutory damages, all claims were withdrawn in exchange for a nominal payment no greater than a hypothetical *ex ante* license fee.
- We removed and then secured the dismissal of a copyright infringement and unfair competition complaint filed against **The Walt Disney Company and Pixar Animation Studios** by a screenwriter/dentist seeking substantial damages and an injunction precluding any future exploitation of the animated film classic “Finding Nemo.” The ruling is currently on appeal to the Ninth Circuit.
- We defended **Miramax Films** in a high profile “contingent compensation” suit filed in New York Supreme Court by Marty Richards, the well-known producer of the OSCAR<sup>®</sup>-winning movie musical “Chicago,” alleging that various accounting practices had deprived him of his fair share of the movie’s financial success. We successfully moved to dismiss a number of claims, after which the remaining grievances were resolved through confidential mediation.

- We have represented **Electronic Arts** in litigation challenging the rights to content contained in various popular videogames, including Madden NFL Football and “Dune” (based on the science fiction classic). In one recent action, all claims were voluntarily withdrawn after we removed the complaint from state to federal court in New York and persuaded the federal court that the claims were both legally unfounded and time-barred.
- We successfully represented the **Academy of Motion Picture Arts and Sciences** in a case that upheld its right to determine which motion pictures satisfy “©OSCAR®-eligibility requirements.
- We vacated an *ex parte* TRO and then defeated a preliminary injunction sought by CMG Worldwide and The Topps Company in Indiana to enjoin **The Upper Deck Company** from marketing its 2008 series of baseball cards with various images and signatures of deceased Hall of Fame baseball players. We then secured the transfer of the action to New York and filed a motion dismiss the complaint, which is pending.
- We have successfully represented the **Baltimore Ravens** professional football franchise in a series of copyright and Lanham Act actions stemming from the adoption by the Ravens of an inaugural logo in 1996 that a plaintiff named Bouchat alleged was substantially similar to a copyrighted design he had submitted for consideration. Most recently, we successfully invoked the “fair use” doctrine to defeat Bouchat’s effort to enjoin the use of historic game footage on which the inaugural logo (long since replaced) appears.
- We represented **ESPN**, the owner and creator of the nation’s premier action sports competition known as the X Games, in an action for trademark infringement against The X Channel, Inc., which intended to launch a national television channel featuring action sports. After we obtained a restraining order prohibiting the launch and a prompt date for a preliminary injunction hearing, the dispute settled favorably.
- We won a jury verdict for **Mattel** in an action brought by a creator of a televised cartoon series seeking royalties based on the sale of toy cartoon figures.
- We represented television software developer **Digeo, Inc.** in a contract dispute involving the development of an interactive television software platform.
- We defended **Data East**, the manufacturer of the popular “Street Fighter II” arcade and home computer game, against copyright and trademark claims filed by a major Japanese software publisher seeking to enjoin sales of the game. The case settled favorably after a variety of successful summary judgment motions eliminated the bulk of plaintiff’s claims.

- We successfully represented **Wired News** regarding its publishing of sealed documents disclosing AT&T's installation of equipment enabling the National Security Agency to wiretap internet communications and seek access to court records.
- We represented **Societe des Bains de Mer (Casino de Monte Carlo)** in a dispute that resulted in an injunction against the unauthorized use of the client's trademarks in a virtual online casino.
- We represented **Fox**, defeating an eleventh-hour application for an injunction to prevent the broadcast of a boxing "reality" program based on violations of boxing regulations depicted in the program, successfully relying on First Amendment prior restraint jurisprudence.
- We have represented **Intuit** in numerous actions relating to its popular software programs, including class actions challenging the company's discontinuation (or "sunset") of certain tech support and online features of its award-winning "Quicken" and "QuickBooks" products.
- We represented **a major record label** in a consolidated consumer class action alleging that the largest recording companies in the United States failed to clearly label certain CDs as containing "copy protection technology" or other unspecified defects designed to preclude duplication or transfer to other media by the consumer.
- We defended multiple lawsuits against **a major studio, television network, toy manufacturers, and artists** based on use of computer-manipulated childhood likeness of adult plaintiffs.
- We obtained a defense verdict for **an international insurance company** in a jury trial regarding an alleged agreement to supply a multi-million dollar revolving credit facility for a feature film production.
- We obtained the dismissal of a suit in which a software company alleged **a major studio** had misappropriated computerized animation technology.
- We represented **Fox** in defeating a threatened injunction of the launch of a primetime television series.
- We won an appeal for **a producer/distributor** establishing the right of filmmakers to use public domain materials that include depictions of deceased celebrities.
- We represent **a major record label** in a \$100 million dispute over the transfer of a record distribution business.
- We represent **a cable channel** in a corporate takeover battle and in suits related to defaults by outside financiers.

- We represent **an association of post-production companies** in an antitrust suit against a developer of computerized film editing system.
- We represented **reporters** in successfully opposing or limiting their testimony in criminal cases in Southern California, San Francisco and Washington state.
- We represented **a major Japanese magazine publisher** in a libel suit brought by a Southern California university, challenging an article published by our client in the Japanese language. We obtained a dismissal of the complaint and the largest fee award ever granted in favor of a media libel defendant.
- We represented **a leading motion picture bond company** in a series of arbitrations and lawsuits involving fraud and breach of contract claims with respect to the budgets of a slate of motion pictures.
- We represented **a major motion picture producer** in a jury trial against a leading bank concerning the financing of a slate of motion pictures.
- We represented **a European motion picture distributor** in an arbitration concerning distribution rights to two major motion pictures.
- We represented **a U.K. motion picture bond company** in an arbitration in London concerning the financing and distribution of a motion picture.
- We represented **a financier of a motion picture** in a series of lawsuits against a major actress over the performance of an acting agreement.
- We represented **an Irish director and producer** in an arbitration concerning the financing and credits for a motion picture.
- We are currently representing **two hedge funds** in an arbitration over the financing and production of a motion picture.
- We are currently representing **an international sales agent** in a dispute over the distribution of a major motion picture.
- We represented **a major television studio** in defeating claims for breach of contract and negligence asserted by an individual arising from his unsuccessful appearance on a popular game show. Our summary judgment victory was affirmed on appeal.
- We represented **Artisan Pictures, DIC Animation, Hallmark Cards, Mattel and United Feature Syndicate** when they faced a multi-million dollar copyright infringement trial over RAINBOW BRITE and ROBOTMAN TV programs and videocassettes. We won a unanimous defense verdict.

- We represented the **Recording Industry Association of America (“RIAA”)** in a patent infringement action brought against it by the operators of peer-to-peer networks concerning the RIAA’s efforts to monitor and combat illegal online copyright infringement.
- We represented **Napster** in a patent infringement action brought by SightSound Technologies in the Western District of Pennsylvania involving three patents that purported to cover the transmission of audio and video files to internet users for a fee. Napster sought reexamination of the patents-in-suit and convinced the USPTO to invalidate all asserted claims in all three patents.
- We represented **DIRECTV** against claims of unfair business practices arising out of DIRECTV’s policies relating to its Pay-Per-View programming, and obtained a complete defense award in a putative class wide arbitration.
- We represented **DIRECTV** against an individual trafficking illegal signal theft devices designed to decrypt and intercept satellite signals without authorization. We obtained a unanimous federal jury verdict finding 102 violations under the Digital Millennium Copyright Act, the Federal Communications Act, and the Electronic Privacy Communications Act resulting in millions of dollars in statutory damages.
- We represented **DIRECTV** in two class action antitrust cases alleging theories of monopolization, horizontal and vertical price fixing, illegal exclusive distribution, and restricted output, relating to the sale and distribution of DIRECTV’s NBA League Pass and NHL’s Center Ice programming packages. We obtained a dismissal on the pleadings.
- We represented **Napster** in massive copyright infringement action brought by music publishers alleging infringement of hundreds of compositions for which they claimed Napster did not have proper licenses to make them available on Napster’s subscription-based internet music website.
- We represented **Napster and Real Networks** in a patent infringement action brought by an inventor claiming infringement related to Digital Rights Management (“DRM”) technology.
- We represented **kSolo (subsidiary of Fox Interactive Media)** in a patent infringement action brought by 1st Media LLC relating to kSolo’s internet based karaoke service.
- We represented **Time Inc.** in a trademark infringement action brought by television news personality seeking to enjoin publication of women’s magazine claiming superior trademark rights in the name. We defeated preliminary injunction motion with Court finding that plaintiff failed to establish ownership of the mark and no likelihood of confusion.

- We represented **DIRECTV** in numerous trademark infringement actions involving competitors' use of **DIRECTV**'s trademarks terms as keywords on various search engines.
- One of our lawyers represented the **Estate of Chet Baker**, the famous jazz musician, in a royalty and contract suit with the artist's former manager and agent.
- Our lawyers represented **Capitol Records and EMI Records** in numerous actions involving The Beatles and their record label, Apple Corps Limited, including high-profile royalty litigation, the criminal prosecution of counterfeiters, and the alleged unauthorized use of "Revolution" in an award-winning Nike television advertising campaign.
- Our lawyers represented **MP3.com** in a federal jury trial in New York on plaintiffs' copyright claims arising from defendant's Internet-based music listening service. The jury returned a unanimous verdict of no actual damages, believed to be the first of its kind to address an online music delivery system.
- Our lawyers represented **MP3.com** in numerous actions brought in New York and California by record labels, music publishers and artists/songwriters including Bob Dylan, James Taylor, Billy Joel, Randy Newman, Heart, Hanson, Hamstein Music, and Soundgarden arising from the reproduction of musical compositions and sound recordings to facilitate MP3.com's Internet music listening service. In the course of more than 20 different lawsuits, during which literally billions of dollars were at stake given the size of MP3.com's innovative but controversial music listening service, many novel issues regarding copyright standing, liability and damages as they relate to Internet music were litigated and determined.
- Our lawyers represented **MP3.com** in connection with an ASCAP rate court proceeding to determine the reasonable level of public performance license payments for audio streaming over the Internet.