

## Barry M. Benjamin

### Partner

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#### Services

Advertising Counseling & Disputes

Brand Licensing & Related

Transactions

Business Process Outsourcing

Copyright Litigation & Counseling

Cybersecurity, Privacy & Data

Governance

Information Technology

Outsourcing

Intellectual Property

Litigation

Trademark Litigation

Trademark, Copyright &

Advertising

#### Industries

Apparel, Accessories & Luxury  
Goods

Automotive

Consumer Goods

Electronics & Computer

Technology

Food, Restaurant & Beverage

Home Furnishings

Media & Entertainment

Retail & Consumer Goods

Technology



Considered to be among the preeminent advertising and technology lawyers in the country, Barry M. Benjamin's practice covers a range of sectors and industries, with clients turning to him as a trusted advisor in a wide variety of contexts including navigating advertising disputes, negotiating technology contracts, advising on privacy issues, and defending consumer-protection oriented class action litigation as well as government investigations.

From his position as chair of Kilpatrick's Advertising and Marketing group, and Managing Partner of the firm's New York office, Mr. Benjamin regularly advises clients small and large, from multinational corporations to start-up ventures, across numerous industries including retail, fashion, hospitality, telecommunications, cosmetics, food and beverage, consumer products, and technology.

He has extensive experience representing companies in competitor challenges and investigations through the self-regulatory advertising industry process (NAD, CARU), and in responding to and defending governmental and regulatory (FTC, State AG) inquiries and investigations. Mr. Benjamin also regularly negotiates technology and commercial contracts, including advertising industry contracts such as agency-client deals, brand licensing, influencer and sponsorship agreements, as well as technology contracts such as website development agreements, programmatic media transactions, and email marketing and list rental agreements.



Mr. Benjamin also has an extensive and varied counseling practice, advising on the structure of and reviewing advertising and marketing campaigns, and drafting terms and conditions for all forms of marketing and promotion initiatives including sweepstakes, skill contests, social media engagement, email (Can Spam), text messaging (TCPA, TSR), and charitable marketing and commercial co-venture programs. He also assists clients with claim substantiation, consumer research, and product testing, and with managing risks in social media engagement (rights of privacy and publicity, protection of intellectual property).

Mr. Benjamin is a frequent speaker on advertising, marketing, privacy, and emerging media issues, and has written articles in many different publications. He is also the author of the chapter "Push the Boundaries, but Stay in Bounds: The Advertising Lawyer's Role in an Increasingly Aggressive Marketplace," in *Advertising and Marketing Law* (Aspatore, 2005). He has been recognized for many consecutive years as a New York "Super Lawyer" in the area of First Amendment/Media/Advertising Law by *Super Lawyers* magazine and has been listed for many consecutive years in *The Best Lawyers in America*® for Advertising Law. Mr. Benjamin is listed in the 2024 and the six years immediately preceding editions of *Chambers USA: America's Leading Lawyers for Business* for Transactional and Regulatory Advertising and was also ranked nationally as a "Recognized Practitioner" in its 2024 and the six years immediately preceding editions. He has been recognized repeatedly for Data-Telecoms and Media Law in *The International Who's Who of Business Lawyers*.

## Experience

Represented AT&T in an NAD action in which AT&T challenged advertising by Comcast for its Xfinity Mobile 5G service, arguing the Xfinity commercial was false and misleading because (i) Comcast falsely claimed that all of its subscribers can get 5G service, and (ii) Xfinity's 5G service is widely available, when neither of those claims were true. We successfully obtained an NAD decision holding that the Xfinity commercial misled viewers as to the actual geographic availability of its 5G service, and recommending that the claim be withdrawn, altered, or a clear and conspicuous disclaimer be included going forward. (NAD Finds Certain Xfinity 5G Disclosures Sufficient ([bbbprograms.org](http://bbbprograms.org)))

Represented AT&T in an NAD action in which AT&T challenged advertising by Charter for its Spectrum Mobile service, arguing the advertisement was false and misleading because (i) Charter's advertisement falsely claimed that AT&T intentionally conceals taxes and fees from consumers, and (ii) Charter's advertisement falsely claims that Spectrum Mobile subscribers will pay only the price identified, without any additional costs or fees. The NAD recommended that the advertiser discontinue the challenged claim that AT&T intentionally conceals taxes and fees, and recommended that Charter's second claim be qualified with a far more prominent disclaimer. (Spectrum Mobile Pricing Claims Supported with Adequate Disclosures ([bbbprograms.org](http://bbbprograms.org)))

Represented AT&T in an NAD action in which Charter Communications argues that AT&T falsely claims to have a "faster internet experience" than cable with respect to having the bandwidth to handle large file uploads. Charter also argued that AT&T's ads also claim that the telecommunications company delivers "consistent speed, even at peak times. However, NAD found AT&T's claims were supported. (NAD Finds Certain AT&T "Faster Internet Experience" Claims Supported ([bbbprograms.org](http://bbbprograms.org)))



Represented AT&T in an NAD action in which AT&T challenged advertising by Charter Communications that (i) falsely implied that AT&T imposes a hard data limit on its internet subscribers, (ii) falsely claimed that Spectrum Internet service offered “better performance” than its competitors with respect to gaming, (iii) falsely claimed that Spectrum Internet was more reliable, (iv) falsely claimed that AT&T charges customers for equipment that Spectrum Internet provides for free, (v) falsely claimed that Spectrum Internet provides the “fastest internet starting speeds for the price,” and (vi) Spectrum Internet has “over 99.9% network reliability”. The NAD recommended Charter Communications discontinue claims (i)-(iii) and modify claims (iv)-(vi) to disclose additional qualifying information. (NAD Finds Spectrum’s Claim Supported ([bbbprograms.org](http://bbbprograms.org)))

Negotiation of data platform as a service MSA on behalf of a data science and software provider, with affiliate of J&J, for research and analysis of patient response and cancer treatment efficacy.

Negotiation of retail mobile security platform as a service MSA on behalf of Dollar Tree, intended to aggregate video and business data analytics around network camera and digital video platform integration, enterprise data integration, video analytics, reporting, and workflows.

Negotiation of retail data cooperation and MSA and SOWs on behalf of Dollar Tree, including ecommerce, in-store, and product purchase data, with national data ratings aggregator.

Negotiation of DAS (Distributed Antenna Systems) Site License Agreement on behalf of Tishman Speyer, to engage service provider Boingo to design, install, operate, and manage wireless systems throughout new development projects, in New York City and San Francisco.

Negotiation of Global Media Buying MSA, DPA, and SOWs on behalf of TikTok, with Publicis entity, Zenith. Focus included ensuring compliance with applicable privacy laws and protection of customer data.

Draft and update website privacy policies, and provide ongoing privacy advice, for film production company, online tutoring service (with COPPA issues), nutritional supplement provider, fashion-oriented e-commerce company, and many others.

Negotiation of sourcing and contract management SaaS License Agreement on behalf of RMR Group, a real estate asset management company.

Negotiation of Influencer Agreement on behalf of Norwegian Cruise Line with multiple social media influencers and celebrities.

Negotiation of customer service and feedback SaaS License Agreement on behalf of national full service restaurants and convenience stores.



Negotiation of outsource MSA on behalf of Sonesta International Hotel Corporation, an international hotel company, for vendor to provide end to end call center operations, including sales and service related telephone work, managed network services, telecommunications, and related IT services.

Represented Tommy Hilfiger with its development of an SMS text message marketing program.

Successfully represented the worlds leading manufacturer of home furnishings in forcing competitor to stop making false and/or unsubstantiated "Made in the USA" claims in advertising.

Advise global telecommunications leader about FTC privacy regulations and the COPPA Rule specifically.

Drafted the "Welcome Home Joe" licensing and promotional contract among our client JA Apparel Corp. and with Iraq and Afghanistan Veterans of America (IAVA), and JCPenney. This promotion provides Iraq and Afghanistan veterans with \$1 million in certificates to purchase professional attire as they transition to the civilian workforce. Representation of JA Apparel Corp. in this contract also included providing clearing advertising copy, negotiating terms and conditions for the promotion, and advising on trademark clearance issues.

Successfully represented Gerson & Gerson, Inc., a childrens clothing designer, in a copyright infringement case relating to the defendant making knockoffs of its toddler dress designs. The firm negotiated a favorable monetary settlement for the client and obtained a final judgment on consent with permanent injunction.

Advised marketing agency on all fifty states' regulations governing a sweepstakes promotions by wine and spirits distributors.

Represented TyraTech, Inc., maker of the Vamousse line of pesticide free head lice solution products, at the NAD against a competitor challenging certain advertising claims.

Represented corporate printing company in development of e-mail marketing policy and Can-Spam compliance.

Advised television network broadcaster on state gambling laws in connection with proposed televised charity poker tournament.

Advised financial institution on compliance with 50 state telemarketing laws.

Advised Owen Mumford, a medical device manufacturer, on state regulations around corporate fund raising efforts, including raffles and a casino night.

Represented men's apparel designer in negotiation of Olympics on-air talent clothing outfitting agreement.



Represented over the counter drug manufacturer in negotiation of NASCAR sponsorship agreement.

Advise advertising agency on the potential laws that are implicated by use of landmarks and in advertising.

Advised global supplier of medical devices on the privacy and advertising laws of various foreign countries in preparation for global marketing campaign.

Successfully represented Suncore Products LLC ("Suncore") in separate investigations by the National Advertising Division ("NAD") and the Children's Advertising Review Unit of the Advertising Self-Regulatory Council seeking substantiation for Suncore's explicit nutritional content claims for its WhoNu? Cookies and inquiring whether Suncore's advertising included an unsubstantiated implied overall equivalency claim concerning the benchmark foods used to illustrate the nutritional content of WhoNu? Cookies.

Advised Norwegian Cruise Line on privacy and cross-border consumer personal data transfer issues.

Represented footwear maker in defense of right of privacy/publicity claims by models whose images were used on packaging.

Represented web site operator in advisory capacity regarding compliance with state lottery and gambling laws concerning internet sales of lottery and gambling devices.

Represented international apparel brand owner in charitable commercial co-venture, coordinating compliance with state law registration and filing obligations.

Advised light bulb manufacturer in the creation of a warranty and advertising that was in compliance with FTC light bulb regulations and the Magnusson-Moss Warranty Act.

Represented financial media publisher defending claims of copyright infringement and hot news misappropriation.

Defended Internet marketer and Web hosting company from fraudulent advertising practices and unfair and deceptive trade practice allegations by state attorney general.

## **Education**

Fordham University School of Law J.D. (1993)

University of Michigan B.A. (1990)

## **Admissions**

New York (1994)



New Jersey (1993)

### **Court Admissions**

U.S. District Court for the District of New Jersey (1994)

U.S. District Court for the Eastern District of New York (1994)

U.S. District Court for the Southern District of New York (1994)

U.S. District Court for the Western District of New York (2005)

### **Professional & Community Activities**

ANA Center for Advertising Law Committee, Member

ANA Ethics Review Committee, Member

New York City Bar Association

Consumer Affairs Committee Member (2021-2024)

### **Insights**

#### [Alert](#)

New State EPR Laws Regulate Manufacturers, Brand Owners, and Others Who Control Packaging Materials; Registration Required in Colorado as of October 1, 2024

October 4, 2024

#### [Perspectives](#)

5 Key Takeaways | Puffery Versus Objective Claims in Advertising: Five Takeaways from the 2024 National Advertising Division Annual Conference

September 19, 2024

#### [Perspectives](#)

Data Licensing: Five Takeaways from the New York City Bar Associations Continuing Legal Education Program on Intellectual Property Licensing 101

September 13, 2024

#### [News](#)

Kilpatrick's Barry Benjamin Quoted in "How Brand Extensions are Created and Why They're So Important"

September 4, 2024

#### [News Releases](#)

Kilpatrick Breaks Record for Number of Attorneys Recognized in 2025 Edition of The Best Lawyers in America®



August 16, 2024