



Benjamin R. Mulcahy

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PRACTICE AREAS

- Entertainment, Media and Technology
- Intellectual Property
- Communications

INDUSTRIES

- Advertising
- Communications
- Entertainment, Media and Technology
- Food and Beverage
- Sports
- Video Game

OVERVIEW

Mr. Mulcahy is a partner in the Entertainment, Media and Technology Practice Group in the Century City and New York offices. He is also co-chair of the firm's Advertising Industry and Sports Industry Teams and a member of the firm's Executive Committee.

Areas of Practice

Benjamin R. Mulcahy represents studios, writers, and independent production companies in various aspects of motion picture and television development, production, finance and distribution. He advises clients on traditional and digital feature film distribution agreements, joint development agreements, co-financing agreements, output agreements, first-look agreements, rights acquisition agreements and options, negative pick-up agreements and related financing documents, television series development and book publishing, merchandising and other licensing agreements. His expertise also includes reviewing chain of title and evaluating and renegotiating copyright termination issues arising in the United States; acting as production counsel and performing diligence on television, motion picture and other intellectual property libraries in connection with mergers and acquisitions in the entertainment industry.

As one of the founding members of Sheppard Mullin's Advertising Industry and Sports Industry Teams, Mr. Mulcahy also represents and counsels major brands, prominent website operators, cable, broadcast and OOH networks and advertising and marketing agencies. His practice includes sports marketing, entertainment marketing, interactive marketing, e-commerce and branded entertainment, preparing endorsement agreements and sponsorship agreements, implementing and avoiding ambush marketing campaigns, preparing and negotiating joint promotion alliances, analyzing and licensing copyright, trademark, publicity and other intellectual property rights, reviewing and clearing long-form and short-form advertising copy in all media, structuring user-generated and professionally-produced content distribution and monetization initiatives, complying with privacy concerns, preparing advertising agency and media agreements, and advising clients in complying with state and federal anti-lottery and anti-gambling regulations governing some of the highest profile on-line and off-line contest and sweepstakes promotions in the country. In representing clients in their online initiatives, Mr. Mulcahy advises on issues arising under the various guild agreements, prepares content licensing agreements, website development agreements and online privacy policies and terms of use

policies, negotiates online hosting, software licensing, ad serving, and ad insertion order agreements, and advises clients in structuring and documenting fantasy sports initiatives and multi-platform consumer loyalty programs. In addition, he counsels clients on compliance with federal CDA and DMCA anti-circumvention and safe-harbour provisions and state and federal legislation that affects e-mail marketing and online data collection such as CAN SPAM and COPPA.

Mr. Mulcahy began his career practicing entertainment litigation, representing clients in cases involving copyright and trademark infringement, profit participation, television and motion picture distribution, product placement, and production credit. He also litigated antitrust and civil racketeering cases in addition to serving *pro bono* as a Special Assistant City Attorney prosecuting gross-misdemeanor jury trials for the Los Angeles City Attorneys Office.

Mr. Mulcahy is a member of the firm's Executive Committee and has been ranked as one of the country's leading attorneys by *The National Law Journal*, which named him at the age of 36 to its annual "40 Under 40" list of leading lawyers under the age of 40. Mr. Mulcahy received a prestigious Burton Award, one of the highest literary honors in law, in 2008 for his legal writing on the virtual world Second Life, was selected for inclusion in the 2007, 2008, 2009, and 2010 editions of *Chambers USA: America's Leading Lawyers for Business* as a leading transactional Entertainment and Advertising Law attorney practicing in New York, has been named a New York Super Lawyer, Entertainment and Sports, by the editors of *Law & Politics*, and has been recognized by *Lawdragon Magazine* and by the Legal 500 as one of the leading Film, Television and Advertising lawyers in America.

EDUCATION

- J.D., University of Minnesota, *cum laude*, National Moot Court, *Minnesota Law Review*
- B.A., Saint John's University, *magna cum laude*

CLERKSHIPS

- Judicial Clerk for the Honorable Paul A. Anderson, Associate Justice of the Minnesota Supreme Court

ADMISSIONS

- California
- New York
- Minnesota
- U.S. Court of Appeals for the Eighth and Ninth Circuits and various federal district courts

HONORS

- America's Leading Lawyers for Business as a leading transactional Advertising Law attorney practicing in New York, Chambers USA, 2007, 2008, 2009, 2010, and 2011.
- Recipient of a Burton Award, one of the highest literary honors in law, in 2008 for his legal writing on the virtual world Second Life. The Burton Awards - "Dedicated to rewarding excellence, encouraging perfection, and defining the standards for others to follow in the profession of law."
- Ranked in the annual "40 Under 40" list of the country's leading attorneys under the age of 40, *The National Law Journal*
- Leading Lawyers in America, *Lawdragon Magazine*, 2007
- New York Super Lawyers, Entertainment and Sports, 2007, 2009, 2010, 2011
- Southern California Super Lawyer, 2010, 2011, 2012

- Recognized, Marketing & Advertising Transactions, Legal 500, 2009, 2010, 2011

MEMBERSHIPS

- Member of the Sheppard Mullin Richter & Hampton Executive Committee
- Member of the Government and Legal Affairs Committee, Promotion Marketing Association, the voice of the promotion and integrated marketing industry
- Member of the Editorial Board, *Professional Sports and the Law*
- Member, Sports Lawyers Association
- Member, American Bar Association, Cyberspace Law Committee
- Member, Fantasy Sports Trade Association

ARTICLES

- Losing Games: Player Strikes Adversely Affect Sponsorship Agreements, *New York Law Journal*, October 31, 2011
- Who's Right On Privacy?, *The Metropolitan Corporate Counsel*, September 2011
- March Madness Isn't For Everyone, *Sports Litigation Alert*, March 25, 2011
- Stealing the Show?, *Sports Litigation Alert*, October 22, 2010
- On Your Marks, Get Set... Ambush!, *Sports Litigation Alert*, February 26, 2010
- Bienvenue Sur eBay - Online Auctions for Counterfeit Luxury Goods Carry Different Risks In Different Jurisdictions, *TerraLex*, September 24, 2009
- The Risks Of Online Auctions, Counterfeit Goods, *IP Law360*, July 16, 2009
- The Athlete Endorsement Game, *Sports Litigation Alert*, April 24, 2009
- Citi Field: What's In A Name?, *Sports Litigation Alert*, February 13, 2009
- Recapturing Ownership Through Copyright Terminations, *New York Law Journal*, October 14, 2008
- Second Life Raises Novel IP Issues, *The National Law Journal*, December 3, 2007
- A New Roll of the Dice, *New York Law Journal*, September 25, 2006
- That's Advertainment!, *Los Angeles Lawyer*, May 18, 2006
- adbriefs, Fall 2005
- adbriefs, Spring 2004
- adbriefs, Winter 2004
- adbriefs, Fall 2003
- Editor of and contributor to www.coveringyourads.com, the firm's online blog covering issues related to the entertainment marketing, sports marketing, integrated marketing, branded entertainment and promotions industries.
- "User Generated Content Promotions: Are You As Safe As You Think You Are?", *2007 Promotion Marketing Association 27th Annual Law Conference Forms Guidebook, 7th Edition*
- "Online Gambling: Are Promotions Agencies Making a Safe Bet?", *2005 Promotion Marketing Association 25th Annual Law Conference Forms Guidebook, 5th Edition*
- "Online Gambling Ads: Who Has the Winning Hand," *Minds in Media, a Media Newsletter Written by Broadcasters for Broadcasters* (<http://www.mindsmedia.com/>), September 12, 2005
- "First Amendment Goes to the Back of the Bus in Rosa Parks Court Battle," *United States Law Firm Group* (<http://www.uslfg.com/>), Current News July 20, 2004

- "But I Didn't Mean That: Printing Errors in Promotions and What to do About Them," *2003 Promotion Marketing Association's 23rd Annual Law Conference Forms Guide*, 3rd Edition
- "Movie Sweepstakes Promotions Require Careful Legal Planning," *Los Angeles Daily Journal*, September 27, 2002
- "Congratulations! You've Got the Part. Now What? - Feature Film Actor Agreements," *International Association of Entertainment Lawyers*, February 2001
- "Tech Wars - 'InterCast' Television Raises New Copyright Issues," *Los Angeles Daily Journal*, May 24, 1999

Ad Briefs Law Blog Articles

- "Will The Revised "Green Guides" Do More Harm Than Good?," October 14, 2010
- "Efficiency v. Privacy: Is Online Behavioral Advertising Capable of Self-Regulation?," April 14, 2010
- "Between Cher And Joe Montana - When Is It Okay To Use A Person's Image To Advertise A Protected Use Of That Image?," November 10, 2008
- "User Generated Content Promotions: Balancing The Sponsor's Rights Against Risks", October 29, 2008
- "Some Rights Reserved - Copyright Terminations Coming Into Clearer Focus", October 21, 2008
- "Cairns Patent Once Again Provokes The Promotions Industry To Re-Evaluate Online Promotional Games", March 24, 2008
- "Endorsement Agreements: Guild Jurisdiction and Allocation Guidelines Both Being Challenged, February 11, 2008
- "User Generated Content Promotions: Are You As Safe As You Think You Are?, February 11, 2008

Intellectual Property Law Blog Articles

- "UMG v. Augusto: Allowing the Sale of Promotional CDs Under the First Sale Doctrine Could Affect Much More than the Music Industry", October 7, 2008

Notable Quotes

- "Analysis: China Joins Product Placement Rush," *Managing Trade Marks*, August 5, 2011
- "Lawsuit Defends Celebrities' Rights to Say Controversial Things on Twitter," *The Hollywood Reporter*, July 25, 2011
- "Endorsement Lawyer Analyzes Mendenhall's Lawsuit," *The Legal Blitz*, July 22, 2011
- "That's Entertainment Law: Copyrights, Contracts, and All That Jazz," *Perspectives - The Magazine for the University of Minnesota Law School*, Spring 2011
- "Taco Bell Tries To Take Bite Out Of Beef Suit With Ad," *Law360*, January 28, 2011
- "Antitrust Lawyers React to NFL's High Court Loss", *IP Law360*, May 24, 2010
- "Big Deals -- Comcast/NBC: For Acquiror Comcast Corporation," *The American Lawyer*, February 2010
- "Trends in Online Advertising", *Practical Law Company*, January 14, 2010
- "Antitrust Case Has Implications Far Beyond N.F.L.", *The New York Times*, January 6, 2010

- "Maybe You Should Go Ahead and Hawk Those Oscar Screeners", *The Hollywood Reporter*, Esquire, July 18, 2008
- "Product Placement: Saviour of Broadcasting or Social Scourge?", *World Media Law Report*, July 3, 2008
- "Down But Not Out: Working Around the U.S. Government's Crackdown", *Gaming Law Review*, Volume 11, Number 2, 2007
- "Texting Spam Leads to New Round of Suits", *The National Law Journal*, June 25, 2007
- "Super Trademarks: Big game, big challenge for NFL IP lawyers battling 'ambush marketers'", *The Hollywood Reporter*, Esq., January 30, 2007
- "Ambushing the Big Event", *Cynopsis Weekender*, January 25, 2007
- "Consumer Products Ripe for Film Parody", *Marketing News*, February 15, 2005
- "Selling to the Elderly: The Marketer's Role", *Sales & Marketing Management*, November 9, 2004
- "Studios Look to Courts as Piracy Rises", *Los Angeles Business Journal*, April 18, 2004
- "Producers Find that Reality Bites, So Lawyers Take Key Role in Production", *Los Angeles Business Journal*, May, 5 2003

Interviews

- "Phelps Suspended from Swimming", Fox News with Sheppard Smith, February 6, 2009

SPEECHES

- Ben Mulcahy is a frequent speaker on branded entertainment, sponsorship & endorsement deals, ambush marketing, copyright terminations, and contest and sweepstakes law and is active in professional organizations including the Promotion Marketing Association, the Fantasy Sports Trade Association, the New York City Bar Association, the Entertainment Law Section of the Beverly Hills Bar Association, and the Cyberspace Law Committee of American Bar Association.
- "Brands & Entertainment – Working together for Mutual and Maximum Success," BNA's 2011 New York International Film & TV Finance Summit, New York NY, September 22-23, 2011
- "Recent Developments in Management of Content Online," New York State Bar Association Webinar, May 25, 2011
- "Trademarks and the Media", 2011 International Trademark Association (INTA) Annual Meeting, In-House Practitioners Workshop, San Francisco, CA, May 15, 2011.
- "Marketing with Sports Properties", 32nd Annual PMA Promotion Marketing Law Conference: I'll be Watching You: Marketing In a Transparent World, Chicago IL, November 18-19, 2010
- "Social Media Memo: Connecting to Consumers in Real Time", *Variety* Film Marketing Summit, Los Angeles CA, October 5-6, 2010
- "Brands and Entertainment", BNA's 2010 New York International Film & TV Finance Summit, New York NY, September 27-28, 2010
- "Advising Clients on the Creation and Content of Their Web Sites", New York State Bar Association, April 20, 2010
- "Development, Copyright and Chain of Title", The Film Division at Columbia University's School of the Arts, New York, NY, September 17, 2009

- "Terms of Use and Privacy Policies - Essential Terms, How to Present Them on Your Website, and How Much Protection Do They Afford", New York State Bar Association: Clearing Web Site Content: Essentials of Advising Clients, New York, NY, March 12, 2009
- "Put That in Your Basket: How Advertiser and Retailer Promotional Programs Work", 30th Annual PMA Promotion Marketing Law Conference: The Message Is The Medium: Consumer Marketing In The Age of Ubiquity, Chicago IL, November 20-21, 2008
- "Staying Legal Online: Advising Clients About Web Site Content", New York City Bar Association, New York, NY, May 12, 2008
- "Ambush Marketing", ANA Business & Legal Affairs Conference, New York, NY, January 17-18, 2007
- "Play in Real Time: Experiential/Event Marketing", 28th Annual PMA Promotion Marketing Law Conference: Hitting the Target: Platforms & Protocols for Reaching Consumers, Chicago IL, December 12-13, 2006
- "Missions Possible: Gaming, Animation, Music and Beyond", USC Gould School of Law, Beverly Hills Bar Association 2006 Institute on Entertainment Law and Business, Los Angeles, CA, September 9, 2006
- "Key Legal and Business Considerations in Talent and Endorsement Contracts", The 16th National Advanced Corporate Counsel Forum on Advertising Law, New York, NY, December 12-13, 2005
- "Roll the Dice: The Difference Between Gaming and Gambling", 27th Annual PMA Promotion Marketing Law Conference: Hyper Change: Maintaining Balance in the Rapidly Changing World of Marketing, Chicago IL, December 1-2, 2005
- "Handling Key Legal & Business Considerations in Talent & Endorsement Contracts: What to Ask for and What to Expect", The 15th National Advanced Corporate Counsel Forum on Advertising Law, June 7, 2005
- "Business in Cyberspace", ACCA Pepperdine Law School, Malibu, CA, June 25, 2004
- "Promotional Tie-Ins and Branded Entertainment: Practical Strategies for Protecting Your Client", American Conference Institute Forum on Advertising Law, Chicago, IL, May 16 – 17, 2004
- "Protecting Your Client in Promotional Tie-In and Branded Entertainment Deals", The 12th National Advanced Corporate Counsel Forum on Advertising Law, New York, NY, December 15 – 16, 2003

EVENTS

- 33rd Annual PMA Marketing Law Conference
- Social Media: How to Minimize Legal Risks and Maximize Commercial Success