

Advertising and Marketing

The advertising and marketing industry is driven by innovation and creativity, yet it is also governed by a complex network of legal and regulatory frameworks. At Miller Canfield, we work alongside advertising agencies, in-house marketing teams, and brand owners to provide proactive legal guidance that helps them succeed in a competitive marketplace.

Our team has extensive experience advising on advertising compliance, intellectual property protection, contract negotiation, and dispute resolution. We help clients protect their brands, meet regulatory standards, and address challenges efficiently—so they can focus on creating impactful campaigns.

How We Support Advertising and Marketing Clients

- Intellectual Property Protection
 - Analyze advertising campaigns, packaging, and product labels to ensure proper trademark use and avoid infringement.
 - Develop and implement strategies to enhance the value of brand portfolios.
 - Advise on certification marks and patent-marking compliance.
 - Draft and negotiate licensing, sponsorship, and product placement agreements.
 - Represent clients in disputes involving trademark and copyright claims, false advertising, and misappropriation.
- Contracts and Marketing Agreements
 - Draft and negotiate marketing-related agreements, including talent and influencer contracts, co-promotion deals, and event sponsorships
 - Develop contracts for product placements, content creation, and celebrity endorsements.
 - Advise on publicity and liability releases for marketing campaigns and activations
 - Negotiate agreements with advertising and creative agencies, media partners, and public relations firms
 - Create tailored project-based contracts for specific marketing initiatives, such as influencer campaigns and digital advertising projects
 - Support agency review processes and help clients streamline requests for proposals (RFPs)
- Digital and Social Media Compliance
 - Help clients develop compliant privacy policies, website terms, and customer loyalty programs.
 - Provide guidance on programmatic advertising strategies, including retargeting and audience segmentation.
 - Draft influencer and endorsement contracts that meet Federal Trade Commission (FTC) standards.
 - Counsel on email marketing campaigns, social media advertising, and compliance with regulations such as CAN-SPAM.
- Promotions and Sweepstakes

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- Draft official rules, disclosures, and agreements for sweepstakes, contests, and other promotional campaigns.
- Advise on compliance with U.S. and international laws governing promotions, including state bonding requirements and illegal lottery considerations.
- Review promotional materials to minimize legal risks.
- Regulatory and Advertising Compliance
 - Review and approve advertising claims for compliance with FTC guidelines and federal and state regulations.
 - Provide advice on sustainability and environmental marketing claims, including compliance with the FTC's Green Guides.
 - Guide clients on "Made in USA" claims, health and safety representations, and advertising to children.
 - Ensure compliance with complex rules around pricing claims, warranties, and comparative advertising.
- Dispute Resolution and Litigation
 - Defend clients against consumer class actions alleging false advertising, misrepresentation, or privacy violations.
 - Represent clients in competitor disputes involving the Lanham Act and unfair competition claims.
 - Advocate for clients before self-regulatory organizations, such as the National Advertising Division (NAD).
 - Assist clients in responding to regulatory investigations and enforcement actions.
- Regulatory Navigation and Risk Mitigation
 - Counsel clients on compliance with evolving federal, state, and international regulations.
 - Provide guidance on recurring subscription models, children's privacy (COPPA), and telemarketing rules (TCPA).
 - Assist clients in navigating FTC and FDA regulations related to endorsements, labeling, and disclosures.

Our Approach

We partner with marketing and advertising professionals to provide practical solutions that align with their creative goals. Whether it's mitigating risks, negotiating agreements, or defending against disputes, our team is committed to supporting your business at every step.

Representative Matters

Successfully defended a federal trademark infringement lawsuit in the U.S. District Court in Minnesota brought by My Pillow, Inc., which sells pillows heavily marketed through infomercials by its founder Mike Lindell. We filed a counter-complaint for false advertising and unfair competition based on false-reference pricing, advertising that presents Mr. Lindell as a sleep expert, and My Pillow's pervasive advertising statements about the medical benefits of its products.

Represented the management of a privately held advertising agency to develop an exit strategy as well as to reorganize its debt and capital structure.

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Represented and advised internet retailer in copyright litigation involving allegations photographs were impermissibly used to sell merchandise. Served as lead counsel and settled the case on favorable terms.

Advised on compliance with industry standards, including behavioral advertising principles, credit-card data standards, and mobile advertising guidelines

Obtained favorable settlement on behalf of leading maker of electronic-paint-thickness gauges on claims of trademark infringement and false advertising.

Represented a multinational automobile manufacturer in a putative nationwide class action in which plaintiffs allege they and putative class members purchased vehicles based on "false and misleading" advertising of the EPA fuel economy for the vehicle, which plaintiffs contend cannot be achieved under normal driving conditions.

Successfully represented a digital media company in a copyright dispute with a television network and a multinational alcohol distributor relating to the use of copyrighted materials in an advertising campaign

Served as co-counsel for a leading producer of consumer goods advertising involving claims of antitrust violations and unfair trade practices and resulting in a \$300 million jury verdict

Negotiated discovery scope, production format and specifications with opposing counsel

Collected and reviewed more than 8 million pages for responsiveness, privilege, confidentiality and various antitrust issue codes and produced approximately 5 million pages of discovery

Prepared and defended client's privilege log and analyzed and successfully challenged thousands of entries on defendant's 17 privilege logs

Developed and maintained a discovery management system for the review and coding of client's 8 million pages of discovery, the 5 million pages of discovery produced by defendant and the 40,000 pages of documents collected from third parties pursuant to 60 subpoenas

Successfully represented a digital media company in a copyright dispute with a television network and a multinational alcohol distributor relating to the use of copyrighted materials in an advertising campaign.

Represented selling shareholders of magazine publishing company in \$6 million asset sale with net sales and advertising revenue based earnout.