

## Barry M. Benjamin

### Partner

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### Services

Advertising Counseling & Disputes

Brand Licensing & Related

Transactions

Copyright Litigation & Counseling

Cybersecurity, Privacy & Data

Governance

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

Barry M. Benjamin chairs Kilpatrick Townsend's Advertising and Marketing group and is the Managing Partner of the firm's New York office. His practice focuses on advertising, privacy, and technology transactions, in areas where traditional and digital media converge, and where evolving distribution platforms and data gathering tools push the boundaries of intellectual property rights, privacy, technology, and content.

Mr. Benjamin regularly advises clients small and large, from multinational corporations to start-up ventures, across numerous industries including retail, fashion, gaming, telecommunications, cosmetics, food and beverage, consumer products, and technology.

Clients view Mr. Benjamin as a trusted advisor for assistance with disputes, often in the areas of false advertising, trademark, unfair competition, trade dress, and copyright, as well as general commercial and fraud claims. Mr. Benjamin has extensive experience representing companies in court, in competitor challenges and investigations through the self-regulatory advertising industry process (NAD), and in responding to and defending governmental and regulatory (FTC, State AG) inquiries and investigations.

Mr. Benjamin regularly negotiates technology and commercial contracts, including advertising industry



contracts such as agency-client deals, brand licensing, promotion, native advertising, celebrity talent, endorsement, influencer, and sponsorship agreements, as well as technology contracts such as website development agreements, programmatic media transactions, email marketing and list rental, software development, and hosting 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, online, mobile, and app games, skill contests, social media engagement, fantasy sports, email, text messaging, and charitable marketing and co-venture programs. He also assists clients with claim substantiation, consumer research, and product testing, with managing risks in social media engagement (rights of privacy and publicity, protection of intellectual property), and with the conduct of due diligence in transactions. With start-up, emerging growth companies, he assists with initial organization, financing, acquisition, and governance issues.

Mr. Benjamin also contributes his time to the industry. He is a former member of the Board of Advisors / Directors of the Brand Activation Association (formerly the PMA) and is an active member of the BAA's Government and Legal Affairs Committee. He is a former Co-Chair of the BAA Law Conference.

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 2018 and 2019 editions of *Chambers USA: America's Leading Lawyers for Business* for Transactional and Regulatory Advertising and also ranked nationally as a "Recognized Practitioner" in the 2018 and 2019 editions.

## **Experience**

Represented international retail clothing brand development of SMS text message marketing program.

Successfully represented the world's 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 children's 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.

Successfully represented major medical supply company in forcing competitor to cease advertising that included false and/or unsubstantiated claims and copyright infringements.

Prepared for media platform a 50 states survey on the laws and regulations governing the acceptance of political advertisements, from candidates, PACs, and Super PACs.

Successfully defended one of the largest discount travel website's on the Internet in a claim for false advertisement and trademark infringement. The dispute was resolved with our client needing to take no action whatsoever.

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 agency on appropriate processes and procedures for event marketing promotion.

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

Represented corporate education and training company asserting theft of trade secrets and copyright



infringement claims for copying website against former employee.

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.

Represented in an advisory capacity an Internet network advertising agency specializing in social media, specifically advised company on privacy issues including their privacy policy.

Represented advertising agency in negotiations with international mobile phone carrier.

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 international cruise line on privacy and cross-border consumer personal data transfer issues.

Represented Internet auction website in defense of claims for fraudulent sales of branded merchandise by brand advertisers.

Advised national quick service retail food company on engaging in user generated content and social media marketing efforts.

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 individual shareholder's withdrawal and buy out of ownership interest in Internet social media



website.

Advised national real estate property owner and manager on negotiating software license for residential property management.

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.

Advised Source Marketing Group on intellectual property issues related to proposed advertising campaign using parodies of current and old movie and television show titles and actors' names.

Represented 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.

Advised well-known job search and career management Internet site on all sweepstakes, contest, and copyright/user generated content law aspects of "Department of Fandemonium" Super Bowl advertising campaign.

Advise medical supply company on the applicability of state "Gift Ban" regulations to sweepstakes promotions targeting medical professionals

### **Education**

University of Michigan, B.A. (1990)

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

### **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**

Brand Activation Association (formerly the Promotion Marketing Association), Board of Advisors/Directors (2013-2016); Government and Legal Affairs Committee, Member

New York City Bar Association

Information Technology Committee, Former Member

Consumer Affairs Committee, Former Member

### **Insights**

#### [News Releases](#)

Kilpatrick Townsend Achieves Top-Tier Recognition from Chambers USA 2019

May 2, 2019

#### [News Releases](#)

Kilpatrick Townsend Names Barry Benjamin Managing Partner of New York Office

April 3, 2019

#### [Perspectives](#)

Video | Advertising, Social Media, and FTC Enforcement

February 13, 2019

#### [Publications](#)

Challenging a Competitor's False Advertising Claim

January 29, 2019

#### [Perspectives](#)

5 Key Takeaways | Advertising, Social Media, and FTC Enforcement

January 25, 2019

#### [Perspectives](#)

Advertising Law Guides | Sweepstakes and Skill Contests: The Legal Basics

January 14, 2019

#### [Publications](#)



KTS Advertising Law Guides | Social Media Engagement: Top 10 Legal Issues and Risk Mitigation Strategies  
December 11, 2018

### [Publications](#)

KTS Advertising Law Guides | Advertising Claim Substantiation Requirements and Legal Clearance Process  
December 11, 2018

### [Perspectives](#)

5 Key Takeaways: Basics of Promotions, Sweepstakes, Contests, and Gaming  
November 16, 2018

### [Events](#)

Basics of Promotion, Sweepstakes, Contests and Gaming  
November 7, 2018

### [News Releases](#)

Twenty Kilpatrick Townsend Attorneys Named 2018 New York Super Lawyers  
September 28, 2018

### [In The News](#)

Record-Breaking Recognition for Kilpatrick Townsend in The Best Lawyers in America® 2019  
August 20, 2018

### [News Releases](#)

Kilpatrick Townsend Achieves Recognition From Chambers USA 2018  
May 11, 2018

### [News Releases](#)

Forty-Four Kilpatrick Townsend Attorneys Named to 2017 - 2018 International Who's Who of Business Lawyers  
March 19, 2018

### [Perspectives](#)

KTS Advertising Law Guides: Anatomy of a False Advertising Challenge  
February 12, 2018



### [News Releases](#)

Kilpatrick Townsend Attorneys Named 2017 New York Super Lawyers  
September 27, 2017

### [News Releases](#)

Kilpatrick Townsend Attorneys Named 2017 New York Super Lawyers  
September 27, 2017

### [Alerts](#)

5 Key Takeaways: Retail & Consumer Goods Industry Team Presentation “In the Trenches with Social Media”  
April 26, 2017

### [Events](#)

In the Trenches with Social Media  
April 18, 2017

### [Webinars](#)

In the Trenches with Social Media  
April 18, 2017

### [Alerts](#)

Your Company's Website Privacy Policy Probably Needs a Refresh (Before February 1, 2017)  
January 9, 2017

### [Alerts](#)

Five Takeaways: In the Trenches with Social Media  
December 1, 2016

### [Alerts](#)

Enforcement of DAA Cross Device Tracking Guidance Set to Begin in Early 2017  
November 17, 2016

### [Alerts](#)

Five Key Takeaways: Promotional Tactics/Pitfalls and Opportunities in Coupons, Rebates, and Experiential Marketing (including the Pokemon GO phenomenon)  
November 15, 2016





### Alerts

Five Takeaways: Is Anything Private Anymore? Privacy Considerations for Social Media, Sweepstakes & More  
October 18, 2016

### News Releases

Kilpatrick Townsend Attorneys Named 2016 New York Super Lawyers  
October 5, 2016

### Alerts

Five Takeaways from Key Panel Discussion at Advertising Self-Regulatory Councils 2016 NAD Conference - "It's All About the 'Fit': Advertising Claims Must Track the Test"  
September 28, 2016

### Events

It's All About the "Fit": Ad Claims Must Track the Test  
September 26, 2016

### News Releases

Kilpatrick Townsend's Barry Benjamin Featured Moderator at the National Advertising Division (NAD) Annual Conference 2016  
August 19, 2016

### News Releases

Kilpatrick Townsend Earns Record-Breaking Recognition in Annual Best Lawyers in America 2017  
August 16, 2016

### In The News

Kilpatrick Townsend's Media Report June 24-30, 2016  
July 1, 2016

### In The News

IP Pro the Internet Interviews Barry Benjamin on Social Media and Advertising via "The Small Print"  
June 21, 2016

### In The News

Kilpatrick Townsend's Media Report May 20-26, 2016



May 27, 2016

#### Events

Emerging Issues in Big Data and Analytics

April 6, 2016

#### Alerts

Website Access for the Disabled: Build It Now

March 31, 2016

#### News Releases

Kilpatrick Townsend's Barry M. Benjamin Featured Speaker at PLI's TechLaw Institute 2016: The Digital Evolution

March 29, 2016

#### In The News

Kilpatrick Townsend's Media Report March 18-24, 2016

March 25, 2016

#### Alerts

Federal Court Rules that Terms & Conditions can Provide Express Consent to Receiving Text Messages Under Telephone Consumer Protection Act

March 8, 2016

#### Events

Internet of Things: Protecting and Profiting from Your Company's Knowledge Assets

February 25, 2016

#### Events

Fashion.connect Volume 8

February 10, 2016

#### News Releases

Kilpatrick Townsend's Barry M. Benjamin: Featured Speaker at American Conference Institute's 4th Annual Summit On Digital Advertising Compliance: Social Media, Sweepstakes & Promotions

October 20, 2015



### Events

Wearables and the Internet of Things: Strategies for Protecting and Monetizing Your Data and Intellectual Property

October 8, 2015

### News Releases

Kilpatrick Townsend Attorneys Named 2015 New York Super Lawyers

September 30, 2015

### In The News

Kilpatrick Townsend's Media Report September 11-24, 2015

September 25, 2015

### Publications

Provide Access for the Disabled to Mobile Applications or Face the Consequences

September 24, 2015

### News Releases

Kilpatrick Townsend Earns Record-Breaking Recognition in Annual Best Lawyers in America 2016

August 19, 2015

### Publications

Oral Arguments in *Kimble v. Marvel*: What Does Your Spidey Sense Tell You About the Court's Questioning and What It Will Mean for the Royalty Term in Your Patent License Agreement?

May 1, 2015

### News Releases

Kilpatrick Townsends Barry M. Benjamin: Featured Panelist at the American Conference Institutes 4th Advanced Forum on Resolving & Litigating Advertising Disputes

March 3, 2015

### News Releases

Kilpatrick Townsend Attorneys Honored by Her Justice 2015 Commitment to Justice Awards

February 9, 2015

### News Releases



Kilpatrick Townsend's Barry M. Benjamin: Featured Speaker at National Constitution Center Webinar  
January 12, 2015