

Dealmakers Q&A: Munger Tolles' Kevin Masuda

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Kevin Masuda is a top dealmaker at Munger, Tolles & Olson LLP, with his practice encompassing mergers and acquisitions, joint ventures, restructurings, public and private securities offerings, and other business financings. Masuda is currently representing Beats Electronics, a producer of high-end headphones and audio equipment, and Beats Music, a subscription music streaming service, in the companies' widely publicized \$3 billion acquisition by Apple.

He has advised long-time client Beats Electronics in several critical transactions, including simultaneously negotiating an agreement for a \$500 million equity investment from the Carlyle Group and a refinancing of its bank facility. Masuda represented Beats Electronics in its acquisition of MOG, a music streaming service, and helped the company secure a strategic investment by Access Industries and other investors to build Beats Music, which launched in January 2014. In addition, Masuda recently represented Universal Music Group in its acquisition of Criterion Music Corp. and sale of the CodeBlack Entertainment video catalog to Lions Gate Films, and Interscope Records in the purchase of a music label.



Kevin Masuda

As a participant in Law360's Q&A series with dealmaking movers and shakers, Kevin Masuda shared his perspective on five questions:

Q: What's the most challenging deal you've worked on, and why?

A: I represented a client in forming a key financing and strategic partnership. It was a very difficult negotiation, but my client believed that this party had both the financial resources and market position to help grow its business exponentially. After many months, the parties finally reached a deal. However, for various reasons outside of my client's control, the relationship quickly began to disintegrate, and its partner began to take aggressive actions to change the express financial terms of the deal. While its partner was clearly breaching its financial obligations, it had both the resources and willingness to litigate. My client was in a difficult situation, and its long-term business strategy was in jeopardy.

Initially, it was a real challenge to keep the parties focused on the business goal of resolving the differences without being overly focused on who is right or wrong. Emotions were running high, and

time was not on our side. It was very stressful being both the lawyer and the therapist! With the help of a strong outside director, solid documentation and reasonable opposing counsel, we resolved the situation and restructured the relationship. Looking back, the difficult negotiations in forming the partnership should have been a strong warning of things to come.

Q: What aspects of regulation affecting your practice are in need of reform, and why?

A: I represent a lot of clients in the entertainment industry, and Section 409A of the Internal Revenue Code has had a dramatic effect on the way deals are structured and the application to contingent payments, such as royalties and participation rights. Section 409A was originally enacted as a response to perceived abuses by Enron executives who cashed out of their deferred compensation plans prior to Enron's bankruptcy. While I appreciate the abuses that the legislation was intended to address with respect to deferred compensation, the rules, as enacted, are overly broad and complex and have had unintended consequences for services agreements in the entertainment industry.

Because the penalties to a service provider for a violation are quite punitive, an inordinate amount of legal time and energy is spent on structuring around the various "foot faults" within the rules. Modifying or repealing and replacing this legislation with legislation limited to preventing the abuse would save our clients both legal fees and heartache.

Q: What upcoming trends or under-the-radar areas of deal activity do you anticipate, and why?

A: Obviously, we've been seeing a lot technology deals, IPOs, acquisitions and capital infusions at big valuations. While many of the deals originated as startups and private equity funded, we're now seeing more established, traditional companies seeking more aggressively to use and buy technology to grow and diversify their revenue streams. The music companies and studios have been doing this for years, but other entertainment players (like gaming companies) have become more active. As the distribution of media continues to evolve and content lines blur, we will see this play out in M&A transactions and strategic partnerships.

Q: What advice would you give an aspiring dealmaker?

A: One of my favorite proverbs is, "When opportunity knocks, some people are in the backyard looking for four-leaf clovers." I always tell young lawyers that they need to actively look for the good opportunities in every deal rather than wait for the opportunities to find them. There are always parts of a deal that create opportunities to broaden one's practice and professional experience. It can be learning about cutting-edge technology or an interesting industry, representing a high-profile client and dealing with press issues, developing working relationships with a sophisticated management team or opposing counsel, or learning new areas of the law (domestic and international). As lawyers, we often focus on the difficult parts of the deal and everything that can go wrong; that's part of our job. I tell young lawyers that we should place an equal emphasis on seeking growth opportunities in every deal. That said, in the heat of a deal, I still have to remind myself to follow this advice.

Q: Outside your firm, name a dealmaker who has impressed you, and tell us why.

I've worked with Cliff Gilbert-Lurie at Ziffren Brittenham LLP on both sides of the table. Whether I'm opposite him in a deal or we're working together for a client, I'm always impressed with his ability to find the core of the issue and come up with creative solutions. As many of us who work in the entertainment industry know, screaming lawyers and aggressive tactics are the norm. Cliff is very

different. He never raises his voice and uses his intelligence and creativeness to cut deals. He is one of the most effective lawyers that I've encountered. It's easy to understand why Cliff is recognized as one of the most powerful lawyers in Hollywood.

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