

Media & Entertainment Group Of The Year: Munger Tolles

By **Annie Pancak**

Law360, New York (February 1, 2018, 3:06 PM EST) -- Munger Tolles & Olson LLP's entertainment team this year won a copyright case for Walt Disney and successfully defended the Motion Picture Association of America, among other victories, earning the group a spot among Law360's Media and Entertainment Practice Groups of the Year.

Partner Kelly Klaus traced the roots of the approximately 25-person team to 1975, when Munger Tolles represented television writers in a challenge to a Federal Communications Commission rule requiring networks to air "family-friendly" programs from 7 p.m. to 9 p.m. Since then, the group, which is spread across the firm's Los Angeles, San Francisco and Washington, D.C., offices, has maintained longstanding relationships with major entertainment industry clients.

Klaus said the team's success throughout the years is because of its ability to evolve with the industry.



"The thing that has fundamentally changed in the last 20 years is the need to understand how content is distributed and how content is protected on the Internet," Klaus said. "That's required all of us to invest a lot of time in understanding issues about how clients protect content and understanding how people try to evade those protections and also how the clients themselves distribute content."

Klaus said his most significant case in 2017 involved those issues. He led the Munger Tolles team that helped Walt Disney, Twentieth Century Fox and Warner Bros. win a copyright case that shut down web service VidAngel Inc., which let users edit Hollywood films to cut out offensive content.

The team first convinced a California federal judge in late 2016 that the Family Movie Act, a law that allows technology to edit objectionable material from videos at home, could not shield the service.

In August 2017, the Ninth Circuit affirmed an injunction on VidAngel, writing in its first-ever ruling on the FMA that allowing the service to hide behind the 2005 law "would create a giant loophole in copyright law."

Klaus said the "giant loophole" would have allowed cursory filtering to be protected by the FMA, such as excluding opening and closing credits.

"There were certainly YouTube videos circulating saying, 'I found this great service, and I don't care anything

about filtering, but I can get these movies for cheap, and the only thing I have to give up is the opening and closing credit,” he said. “That’s the point that I think the judge understood.”

The appeals court also rejected VidAngel’s fair use defense, upholding the California federal court’s December 2016 ruling that the service violated the Digital Millennium Copyright Act’s protections for digital encryption when it ripped the movies to its servers.

Shortly before that win, Klaus led a team that successfully defended the Motion Picture Association of America and its six member studios in November 2016 from a proposed class action claiming the motion picture rating service misled consumers by not automatically applying an R rating to movies featuring cigarette smoking.

A California federal judge found that the ratings constitute protected speech under a California statute because the films are expressive works and the ratings are opinions.

Klaus said the ruling established that movie ratings are guidelines to give parents an idea of which movies require further discussion and not that PG or PG-13 movies equate to “all’s clear.”

“The significance was that it sort of made clear that the ratings never held themselves out to be that we are giving some sort of a certification stamp that if something is less than an R rating there’s not any harmful material there that could someday cause some harm for some people,” he said.

In addition to representing major Hollywood studios and longstanding clients, Munger Tolles also won a case for a more recent client in 2017.

The firm successfully defended Las Vegas music festival “Life is Beautiful” in a trademark and copyright infringement case. A team led by partner Tammy Godley obtained summary judgment for the festival in November 2016 and received nearly \$1 million in attorneys’ fees in May 2017.

A California federal judge found in the case that the plaintiff, an artist called Mr. Brainwash, had “attempted to secure a monopoly” over the “Life is Beautiful” phrase, and that his splashed heart paint designs were not similar enough to meet any infringement standard.

Godley said the ruling was significant because her team recognized at the outset that Mr. Brainwash had no trademark use. Over the course of discovery, they found that the artist’s eight “intent to use” trademark applications relied on false statements because he did not actually sell the types of goods on which he obtained the marks.

“[Mr. Brainwash] had submitted pictures [to the Patent and Trademark Office], and they admitted that those were falsified,” Godley said, “And you usually don’t get people to admit fraud in depositions.”

In May, the judge found that the case met the bar for attorneys’ fees and awarded the firm \$922,000.

According to Godley, the team’s success stems from its long term allegiance to media and entertainment clients.

“We have great relationships within the industry and are really committed to their issues and have been over a long period of time,” she said.

--Additional reporting by Bill Donahue and Melissa Daniels. Editing by Emily Kokoll.
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