

New York City Bar Association

Practicing in Advertising, Marketing and Public Relations

Michael Schiffer is an associate in the Advertising, Marketing, and Public Relations Group at Frankfurt Kurnit Klein & Selz PC, focusing on intellectual property and advertising matters. Mr. Schiffer's wide-ranging practice encompasses trademark and copyright law, IP and music licensing, agency and talent agreements, branded entertainment arrangements, sweepstakes and contests, network clearance and copy review. He was named a 2011 "Rising Star" by Law and Politics Magazine.

Education: Mr. Schiffer is a graduate of Boston College Law School and Cornell University.

Prior Experience: Prior to joining Frankfurt Kurnit, Mr. Schiffer was an associate with Goodwin Procter LLP, where he advised on trademark and copyright litigations, government investigations, contractual and stockholder disputes and trial matters.

What is it like to practice law in Advertising, Marketing, and Public Relations? Is there a typical day you can describe?

It is a really exciting area of the law. We represent big brands, such as Johnson & Johnson, Avon and Nike, big advertising agencies, such as Crispin Porter & Bogusky, smaller brands and ad agencies, as well as individual talent in the modeling and acting industries. I often negotiate talent and licensing agreements and advise my clients on a wide range of IP, social media and advertising matters. I feel that I am always learning new things through my practice and from my clients. Many litigators typically work on a few large cases over a period of time. In my current practice, I may be dealing with ten different client matters on a typical day. I often get on the phone with a client who needs a quick response or my advice on how to deal with a particular issue or situation. It feels like there are eight different "emergencies" each day and clients expect a quick response, so the day goes by very quickly. I often rely on my colleagues for feedback – we have a very collegial group and it is not uncommon for attorneys in my firm to shoot an email to the group asking if anyone has dealt with a particular issue or legal matter. We also share information and resources, attend conferences, read legal blogs, write alerts on recent caselaw and make sure that we are always up to date on the latest developments in our industry.

What challenges do you experience in your practice?

I often have to deal with emergency phone calls and address an immediate and pressing issue my client is dealing with. As part of this, I counsel my clients to focus on the right issue, directing them towards a sensible solution and addressing their emotional needs. Over the years, I have learned to better prioritize my time and also distinguish real emergencies from every day struggles. With the pervasive use of social media in advertising these days, my clients are always trying new things, and I must stay current with all the changes in the law. This area of the law is not settled, so I must think quickly on my feet when offering legal advice and dealing with novel issues.

What aspects of your practice make it interesting and rewarding to you?

My practice is very dynamic and engaging. I am not just interested in advertising law; I am also interested in the advertising world, and this job allows me to be part of both. I find that I am working with my clients as their business partner, not just their legal counsel. I am often engaged in the decision-making process – what makes sense to do and what risks are worth taking from a business perspective. I work through these issues with my clients and they seek and value my advice, which is so rewarding and satisfying.

What role does social media play in your practice and in your clients' businesses?

Most of my clients utilize social media in one way or another. Some clients are only getting started and may have some basic questions, some are more advanced in their use of social media and come to me with very complex issues. My colleagues and I often give presentations and seminars to our clients on various social media topics because we want to make sure that our clients are aware of potential issues, whether they are using social media to advertise a product, or engage a talent, or they are developing new policies for use of social media by their employees.

How does your knowledge and experience in Intellectual Property law help in your practice?

I often use my IP legal training to flag important issues for my clients, such as clearing any trademark and copyright issues prior to rolling out a new commercial or using a logo, obtaining releases and consents if someone is featured in a photo or an ad, and other issues of this sort. The key is issue spotting and then dealing with the issue in order to avoid a potential future litigation or minimize that litigation risk.

What educational or vocational background and skills are helpful in excelling in this practice area?

We have taken people into our department with either a litigation or a corporate background. It is most important to have a curious mind and a real interest in the advertising world. Prior IP experience will definitely give one a 'leg up' in this field, but it is very important to become actively involved in the industry: attend seminars and presentations, join professional groups. I came with knowledge in IP law and an interest in the industry and learned mostly on the job from my colleagues and clients over the last five years. In terms of law school classes that might be helpful, I would definitely recommend an IP law class, contracts and developing your negotiation skills. In this profession, it is very important to not only get the best result for your client, but do so in a way that treats the opposing side with respect. While I always put my clients' needs and interests first, it's also important to be creative and work towards a compromise that makes business-sense for both sides. Also, you never want to do anything that would damage your integrity, or your professional relationship with your negotiating partner. Some great relationships are often forged with adversaries, who can even become sources for referrals.

What does it take to become successful in this practice area?

First, one must have and demonstrate a real interest in the advertising industry. Second, one must have strong people skills: most of my time is spent talking to clients on the phone, working with them through various issues, managing client relationships. Third, one must be prepared to

work hard and go the extra mile. That means being prepared, doing additional research, staying current on the law. It also includes gaining the confidence of your colleagues, which is a great measure of your success. Be a leader and become proactive at your firm, in your community; be known as an expert in your field.

Could you share the most important things you have learned over the years as a practicing attorney?

- 1) Focus on quality, not quantity. It is really important to do a great job at what you do. Associates often feel a lot of pressure to deliver legal services faster and take more work, and with experience, one should be able to do that. However, people always appreciate when you do good quality work and this should be your top priority.
- 2) Don't be afraid to speak up. Remember that, as a lawyer, you may be that "grown-up" in the room who needs to figure out the smartest, most reasonable and practical way to go. Even if there are people more senior to you in age or status, do not be intimidated to ask questions and offer rational solutions – people will respect you for that.
- 3) Really listen to your colleagues and clients before jumping to a conclusion or offering a solution. Take into consideration other people's opinions and experience.
- 4) Don't limit yourself to the question brought to you. Take a step back and figure out the real issue, look at the bigger picture and don't be afraid to ask questions. Be an investigative reporter, get to the heart of the issue and trust your judgment.

Did you have mentors who helped you define and shape your career and its direction? How did you form these relationships?

One of my earliest mentors was my law school professor – Professor Alan Minuskin, who was supervising my work at the Legal Assistance Bureau while I was at Boston College Law School. He gave me the confidence in my writing, as well as my intuition, which serves me well until this day. I forged this relationship by wanting to share with him, getting his feedback on what I was doing. I also view my colleagues at Frankfurt Kurnit Klein & Selz PC as my mentors. I could not thrive at a firm where I did not feel comfortable, and I am fortunate that my colleagues are really supportive, smart and willing to share their extensive experience. Of course, one has to be proactive and ask questions to benefit from these relationships.

What are your interests/hobbies/pursuits outside of your practice area? How do you make time for them?

Outside of work, I spend most of my time with my family. I have two beautiful boys, ages one and three, and they keep me very busy. I try to find time for them because they are so important to me and I want to be present in their lives.

What practical advice can you give to law students and young lawyers considering this practice area?

Stay in touch with your law school classmates – these are valuable connections in your professional career (and don't underestimate the power of friendships!). If you have an interest in any particular area of the law, such as advertising, research and attend industry meetings, join bar committees, reach out to your law school alumni who are practicing in these fields and build your personal network.

Could you recommend any reading materials about your practice areas?

Eric Goldman has a great Technology & Marketing Law blog (<http://blog.ericgoldman.org/>). Also check out *Advertising Age*, a well-known publication in the advertising industry (<http://adage.com/>).

Interview conducted by Irina Gomelskaya, Certified Life Purpose and Career Coach and Member of the Career Advancement and Management Committee, January 2012.