

## Media & Entertainment Group Of The Year: Davis Polk

By **Emily Brill**

*Law360 (February 20, 2024, 2:44 PM EST)* -- Davis Polk & Wardwell LLP negotiated deals that allowed NBCUniversal to expand its streaming platform to sub-Saharan Africa and Taboola to power native advertising on Yahoo-owned websites, plus defeated a \$177 million lawsuit against longtime client Comcast, landing the firm a spot among Law360's Media & Entertainment Groups of the Year.

The group's deal closures and trial wins, which also included a securities suit victory for Tencent Music Entertainment Group, made this a banner year for Davis Polk, which has practiced media and entertainment law for over a century.

Founded in 1849, Manhattan-based Davis Polk is often thought of as a Wall Street firm, said firm partner Lee Hochbaum, the lead counsel to Taboola on the Yahoo deal. But the global law firm has built a powerhouse team of attorneys who specialize in media and entertainment law across practice areas, including mergers and acquisitions, intellectual property and international restructuring.

"Lee has many media clients but also has many clients in other industries, and that's also true of my own practice," said Frank Azzopardi, who leads Davis Polk's IP, tech and commercial Transactions practice group, and who piloted the NBCUniversal Media LLC transaction. "So, we don't wear a single hat, but we do find that that cross-industry mindset and expertise is valuable. We're intimately familiar with the market landscape when it comes to media and entertainment clients."

Azzopardi said media and entertainment law has been a growth area for Davis Polk, with the practice group's expansion resembling that of Comcast Corp., which it has represented for several decades. Davis Polk has taken the lead on numerous milestone transactions and lawsuits involving the company since 1988.

One of those lawsuits wrapped in April 2023 with a trial win for Comcast, freeing the company from allegations it infringed on a Florida company's patent for a system that enables television and film streaming. The company, WhereverTV Inc., claimed in Florida federal court that Comcast's Xfinity X1 entertainment platform infringed upon that patent, which it secured in 2014. The suit sought \$177 million.

Comcast, which maintained throughout the five-year lawsuit that its engineers independently created X1, beat the litigation on a motion for judgment as a matter of law before the case went to the jury — a rare occurrence, the lead Davis Polk attorney on the case said.



"Those motions are infrequently granted to begin with, but in a typical case, the court will receive a jury verdict, and then if the jury verdict is in favor of the plaintiff but the court believes the plaintiff failed to prove an aspect of the case, the judge may rule, as a matter of law, that there wasn't enough evidence for the jury to find that way," said Ashok Ramani, the head of Davis Polk's IP litigation practice. "What was unusual here was that the court made that decision before the case went to the jury."

Ramani said Davis Polk was "only able to find one other instance of that being done, certainly in recent years."

The firm also received a favorable ruling in a case involving Tencent Music Entertainment, a Shenzhen, China-based company that develops music streaming services for the Chinese market, in New York federal court.

Davis Polk attorneys, including civil litigation partner Edmund Polubinski, helped the company defeat allegations it violated U.S. securities law by withholding information about a Chinese antitrust investigation from its initial public offering registration statement. The ruling "confirmed a principle in unusually clear language that there's no abstract duty on the part of an issuer to disclose an ongoing investigation," Polubinski said.

"That's an issue that comes up all the time," he added. "There's good case law on this, but nothing that's quite as recent or quite as clear."

Beyond the courtroom, Davis Polk's media and entertainment practice group notched notable wins for clients executing blockbuster transactions in 2023. Those included a platform technology licensing services agreement between NBCUniversal and South African entertainment company MultiChoice, which ushered in a significant expansion of the Peacock streaming platform.

Executing the transaction was a highly involved process, Azzopardi said.

"It represented a massive investment of trust from MultiChoice to NBCUniversal, because it's taking pivotal backbone technology and essentially shuttering its own service and relying on the Peacock technology," Azzopardi said. "It's challenging to pivot to a new platform. One of the key aspects to the transaction was building trust between the parties and ensuring these risks were appropriately legislated for."

Another important transaction for Davis Polk's media and entertainment practice group last year was a 30-year exclusive commercial agreement for Taboola Inc. to handle native advertising on Yahoo Inc.-owned sites, which is expected to generate \$1 billion in annual revenue, the firm said.

"Taboola is a native advertising platform that powers recommendations across the web. They have an [artificial intelligence]-based algorithm that powers content that is customized to the viewer," Hochbaum said. "To enter into an exclusive partnership with Yahoo regarding native advertising created an enormous commercial opportunity for Taboola."

The "transformative" transaction, which gave Yahoo a minority stake in the advertising company and a seat on Taboola's board of directors, "combined a very significant commercial agreement partnership" with "a significant shareholder and governance arrangement," making it complex to navigate, Hochbaum said.

"You can imagine when you're combining the commercial aspects of the transaction with the more traditional M&A and governance aspects, that's a unique transaction," he added.

Davis Polk's high-profile work in the media and entertainment sector is continuing in 2024. Among other transactions, attorneys are currently working on a \$4.4 billion restructuring of the Jamaica-based cell network Digicel that is on track to be one of the largest restructurings in Caribbean history, said Timothy Graulich, who leads the firm's international restructuring practice.

--Editing by Kristen Becker.

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