

Media & Entertainment Group Of The Year: Gibson Dunn

By Britain Eakin

Law360 (February 4, 2022, 2:02 PM EST) -- Gibson Dunn & Crutcher LLP secured Rachel Maddow's win over defamation claims from far-right media outlet One America News and helped Bob Dylan defeat claims that a co-writer on his 1976 album "Desire" was owed more than \$7 million from the music icon's 2020 sale of his song catalog, earning the firm a spot among Law360's 2021 Media & Entertainment Groups of the Year.

In August, the Ninth Circuit affirmed a district court's decision that when MSNBC's Maddow quipped that One America News Network "literally is paid Russian propaganda," it was an "obvious exaggeration" and did not amount to defamation. The decision affirmed Maddow's May 2020 win in the \$10 million suit, also handled by Gibson Dunn, with a California federal judge ruling that the host's statement was shielded by California's anti-strategic lawsuit against public participation, or anti-SLAPP, law designed to protect against lawsuits meant to chill free speech.



Scott Edelman, the co-chair of Gibson Dunn's media, entertainment and technology practice group, told Law360 the firm was well-positioned to secure the Ninth Circuit win because of its long history of First Amendment work. Founded in 1890, Gibson Dunn boasts more than 1,600 lawyers spanning 20 global offices, giving it a plethora of resources and experience to call upon in helping clients handle complex media and entertainment-related matters.

Edelman said the firm's deep bench was apparent in securing Maddow's win, with the team able to blend various strengths — including his extensive experience handling litigation in the entertainment space for NBCUniversal, which owns MSNBC — combined with the renowned First Amendment expertise of partner Theodore J. Boutrous Jr., who has handled some of the firm's highest profile press freedom cases.

OAN's parent company, Herring Networks Inc., sued Maddow after her July 22, 2019, show on MSNBC about an "undisputed" news article in The Daily Beast that reported that OAN employs an on-air reporter who is also on the payroll of Sputnik, the Kremlin-financed propaganda news organization, according to court records.

Edelman said it was a challenge to explain Maddow's use of the word "literally" when she said OAN paid Russian propaganda, but ultimately the team was successful in arguing that, in the context of what she

said, her use of the word amounted to rhetorical hyperbole protected under the First Amendment.

"It was an important victory for her, for NBC and for the First Amendment that this kind of voice not be stifled by claims of defamation," Edelman said.

The firm also helped resolve a contractual dispute in Bob Dylan's favor following the sale of his entire 600-song catalog to Universal Music Group, with a New York state judge in August dismissing a suit from the estate of songwriter Jacques Levy, who co-wrote seven of the nine songs on Dylan's album "Desire." Levy's estate sought more than \$7 million in royalties from the sale, but the judge found that a 1975 contract limits the co-writer's compensation to licensing revenue and does not include proceeds from the sale.

Edelman said the most challenging part of that case was navigating the estate's attempt to turn a straightforward breach-of-contract case into a dispute over authorship. The estate had urged the court to ignore the work-for-hire nature of the agreement and said the songs should be considered joint works co-owned by Levy and Dylan because of the nature of their relationship during the co-writing process. For example, Edelman said Dylan didn't force Levy to maintain certain hours, they went grocery shopping together, and they didn't sign the contract until a few months after the writing was done.

"We were able to convince the court that none of that mattered, because even if a post-hoc analysis of the relationship could call into question the work-for-hire nature of the songs, Levy expressly transferred any rights he retained to Dylan, and he was only owed payment on the songs pursuant to the specific provisions of the contract — payment his estate has continued to receive following the catalog sale to Universal," Edelman said.

Among Gibson Dunn's other notable achievements in 2021, the firm advised Twitter co-founder Jack Dorsey's financial services company, Square Inc., which now goes by Block Inc., in a \$297 million acquisition of a majority ownership stake in Jay-Z's global music and entertainment platform TIDAL. The platform has more than 80 million songs and 350,000 videos in its catalog.

Kevin Masuda, a partner in the firm's Los Angeles office and co-chair of the firm's media, entertainment and technology and betting and gaming practice groups, was among the attorneys who advised Dorsey in Square's acquisition of TIDAL. Masuda said there was a lot of transaction activity in the content distribution space last year, with this deal illustrating how innovators like Dorsey are driving an evolution in how music gets distributed and monetized.

"That was a fascinating transaction for Square because it was really pivoting into a new business line, but consistent with Square's philosophy of facilitating business for sellers of all sizes," Masuda said. "It is doing the same thing for music artists in building a platform where artists can grow their fanbase and monetize their music as the music distribution and consumption model continues to evolve."

--Editing by Ellen Johnson.
