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Dedicated to DIX

The New 'Players' In Hollywood

L.A.'s Ziffren Brittenham
invests in media technology.

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NATIONAL LAW JOURNAL STAFF REPORTER



ANNE FISHER

Star quality:
Ken Ziffren is an
entertainment
law institution.

handle pauses. "Yes," he adds, "I do get those phone calls."

The buzz doesn't go far enough, argues broadcast legend Fred Silverman, since 1981 a client of Mr. Ziffren's law firm, Ziffren, Brittenham, Branca & Fischer.

The firm's reach "transcends studio affairs. They're into sports franchises. They're plugged into the entire telecommunications industry," says Mr. Silver-

THE BUZZ IS that anyone would be crazy to consider buying a major Hollywood studio without first consulting entertainment lawyer Kenneth Ziffren.

"Isn't that a nice thing to hear someone say?" responds Mr. Ziffren, with a smile like a little bow of acknowledgment. He may not be a litigator, but he knows how to

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L.A. Entertainment Firm Turns Entrepreneurial

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man, who headed the entertainment divisions of ABC, NBC, and CBS before becoming an independent producer.

More plugged in, it turns out, than anyone suspected. Last fall the business wires reported a new partnership: Electronics retailer Circuit City had invested \$130 million for two-thirds of a new company, Digital Video Express Entertainment, which will offer consumers a variation on digital video disk/DVD technology. The remaining one-third of Divx (it rhymes with civics) will remain with its founders, identified as Ziffren Brittenham.

So the law firm and the retailer are going into 1998 as partners in a pioneering technology that some have dubbed the next CD-ROM for entertainment—a type of pay-per-view system for movies that industry analysts say has the potential to be in 20 million homes within five years and could revolutionize the movie rental business. No small aspect of this revolution is a new concept for Hollywood: the law firm as player.

A long-term client, DreamWorks SKG co-founder Jeffrey Katzenberg, says: "I've always thought of them as more than a law firm. They are players, in the best sense of the word."

'Multiples of a Million'

The local legal community has greeted Ziffren Brittenham's Divx news with envy, confusion and caution—particularly caution. In other words, another round of "Don't quote me, but aren't there some conflicts of interest?" that recalls the sniping in a 1995 Forbes magazine article about the firm. The article concluded that Ziffren Brittenham's practice of taking a percentage of deals instead of charging hourly rates had put its partners into three of the top four positions in a national ranking of high-paid lawyers.

The firm started on the road to Divx in 1992, when name partner Harry "Skip" Brittenham became intrigued with the idea of a technology that would tie television sets to computers. He and Kenneth Ziffren are the only firm members who invested their own money—"We put in, shall we say, multiples of a million," he says. But they decided the venture would belong to the firm as a whole, with each partner owning a share.

Mr. Ziffren says some firm lawyers have put thousands of hours into Divx, notably Ziffren Brittenham's in-house computer whiz, Paul Brindze, a partner who also is president of Divx, a venture that can be seen as benefiting the industry while advancing clients' interests.

Of course, the firm's clout didn't hurt when it came to negotiating software licenses for the movies on the Divx disks; without the credibility of Ziffren Brittenham, presumably it would have taken longer to enlist the likes of Paramount, Universal, DreamWorks and Disney.

Would-be critics go to lengths that border on the comic to avoid being identified. After securing a promise of anonymity on the subject of Divx, one executive in the TV division of a major studio confides in a telephone interview, "I just adore Skip Brittenham."

So why the secrecy? Because, the executive explains, of what his silence about Ken Ziffren might imply.

On the record, entertainment lawyer Joseph A. Yanny says, "They are very good at what they do, I'm just not certain that what they do is the practice of law." Adds Mr. Yanny, of Century City, Calif.'s Fischbach, Perlestein, Lieberman & Yanny, who once represented a plaintiff against the firm (the suit settled out of court), "They are powerful brokers and artful packagers, Ken Ziffren himself? He's a very bright man. He should have been an executive."

But Mr. Ziffren is—as he puts it, "by birth and by inclination"—a second-generation entertainment lawyer who uses his law firm as Command Central for civic, charitable, political and business

endeavors. Or, to quote another catchphrase favored by both Mr. Ziffren and his designated heir, partner Sam Fischer, "for value plus."

The emergence of Ziffren Brittenham as an owner-initiator can be seen as a logical extension of the personal career of Mr. Ziffren's late father, Paul Ziffren.

Coming from Chicago in the 1940s, he was, as a Jew, shut out of Los Angeles' blue-chip firms, the elder Ziffren has said. By representing stars in their business dealings, he positioned himself well for the time when Los Angeles' legal elite would conclude that the practice of entertainment law was no longer marginal.

In 1979, he negotiated a high-level lateral entry into what was then the state's largest and most prestigious firm:

Gibson, Dunn & Crutcher L.L.P. Gleaning his status as a quiet eminence was a cluster of civic and political activities. Ziffren père had become California Democratic party chairman, mentored Los Angeles' multi-term mayor Tom Bradley and sat as chairman of the board of the 1984 Olympics.

While the younger Ziffren picked up many of his father's ways, he also made some contrary choices. He has avoided big firms, he now speculates, in part because of the cachet they had in his father's eyes. He vows that Ziffren Brittenham will never be larger than 20 lawyers.

Big firms have also come courting in the past decade, offering greater resources in exchange for a merger. But when Ziffren Brittenham already cuts interactive television deals between Microsoft and Steven Spielberg, assesses MGM's film library for buyer Ted Turner and structures the biggest network affiliation realignment in television history, between New World and Fox, the contention that the firm needs more resources is a hard sell.

Besides, small firms are more collegial, Mr. Ziffren says, adding (one suspects even more significantly), "Here you

can be the master of your fate."

When the younger Ziffren left the firm where he had practiced with his father and nephews, just before they went to Gibson, Dunn, he already had a reputation as a workaholic. At the University of California at Los Angeles School of Law, he had been editor-in-chief of the law review and had clerked for U.S. Supreme Court Chief Justice Earl Warren, helping to write the *Altranda* decision.

He struck up a partnership with Harry Brittenham, a U.S. Air Force Academy graduate who already had established himself as a rainmaker. Their new firm rushed to open in December 1978, Mr. Ziffren recalls. "We'd already bought our furniture and wanted to start amortizing it in that year."

"That," Mr. Brittenham says, laughing, "is pure Kenny."

Mr. Brittenham takes credit for the firm's following the then-unusual but now-common practice of billing the way talent agents do—by taking a share of the action. "I really loathe time sheets," he says. "And both of us were interested in a lean, aggressive firm without aperturances like litigation departments."

(Anonymous snipers suggest another reason for shunning litigation: Litigation makes enemies, and the firm's success is built on contacts wide and deep.)

The firm's earliest clients were television talent. In the course of one decade, by one estimate, Ziffren Brittenham came to represent a third of prime time. Meanwhile, Mr. Ziffren was moving toward the corporate side, observing that writing even Harrison Ford's and Eddie Murphy's contracts could be a bore.

At the height of the popularity of NBC's series "Cheers," the firm represented stars Ted Danson and Woody Harrelson, as well as the late Brandon Tartikoff, then chair of Paramount, which produced "Cheers," and NBC network President Warren Littlefield. As a rule,

An electronics retailer and L.A.'s Ziffren Brittenham are in business together offering a DVD-like product.



Less is More? Partners, from left, Kenneth Ziffren, Harry "Skip" Brittenham, John Branca and Sam Fischer have only 20 lawyers in their firm, despite huge successes.

Mr. Brittenham says, he specializes in sellers and Mr. Ziffren in buyers—although, he adds, he did broker the reported \$100 million sale of Miramax Entertainment to Disney.

Peter Gulser, chair of Mandalay Productions (which just made "Seven Years in Tibet"), says he values Ziffren Brittenham for its strategic planning. Over the past 20 years, "the business of our business has become about a thousand times more complicated," says Mr. Katzenberg, and Ziffren Brittenham is always a step ahead. "Micropicture, macropicture, they really do understand it all."

The firm takes in big-firm refugees, who start with the title "partner" or quickly obtain it. Third name partner, John Branca, joined in 1980 with a music specialty. When the nation's biggest pop star, Michael Jackson, fired him after a decade of representation, Mr. Branca filled his spare time by negotiating a three-record, \$40 million package for the Rolling Stones and a \$39 million publishing deal for Elton John. (Mr. Jackson returned to the fold.)

So it might come as a shock to learn that Mr. Branca is a nonequity partner. In fact, the firm is solely owned by Mr. Ziffren and Mr. Brittenham. They hold veto power, and they alone determine compensation. Mr. Ziffren confirms that sessions in which the partners-for-hire discuss what they accomplished and failed to accomplish can be rancorous. But he also leaves the impression there's so much money to go around that no one can be angry for long. Besides, Mr. Brittenham says, changes are afoot, and partners will "transition into ownership in the coming year...It's not going to make any difference for them financially, but it will make everyone feel better."

Divx is a gamble. The business press has reported a rivalry between the DVD system and Divx à la VHS and Beta—a comparison Mr. Ziffren rejects, noting that a Divx player can handle its own or DVD discs, while Divx encryption won't work on DVD players. So, they think of their product as enhanced DVD rather than a separate system.

If Divx fails, the partners insist, the only damage will be psychic. "The money has all been spent," says Mr. Ziffren. "It sounds awful, but we have nowhere to go but up."

A bigger change is that Mr. Ziffren is making time for outside activities such as teaching a class at UCLA on TV deals.

"If you say I am retiring, I'll be pissed," he warns, "but this here"—he points to Mr. Fisher—"is the man I'm passing the baton to."

Mr. Ziffren will always be around for the fun deal, he says, defining a fun deal as one like the \$4.4 billion, four-year package he negotiated for the National Football League with the networks.

"We were surprised," says Mr. Brittenham. "We always thought Kenny would die chained to his desk."

Mr. Silverman says it's logical that Mr. Ziffren should be disengaging: He has a happy second marriage and a beautiful new house. "Plus, he's close to Dick Gephardt, and if Gephardt makes a run for president, I wouldn't be surprised to see Ken be part of it."

As hefts a player, Ziffren Brittenham owns its 10-story office building in Century City, says Mr. Fischer. All the partners share in that ownership. The new decor manages to be casual and imposing at the same time. "We designed it to be like a home," he explains—a very nice home, heavy on leather and polished wood, with an original Miró in the lobby.

On the 10th floor Mr. Ziffren says, he'll always keep his office. Fielding a misdirected call from a secretary, he demonstrates the authority and finesse that, besides expertise and networking and goodwill, it took to build his empire.

"I don't have the faintest idea who I am talking to," he says softly, interrupting the secretary's monologue. "Do you?"