

Fame and fortune

As the use of celebrities to promote products and services booms, **Jeff Van Hoosear** of **Knobbe Martens Olson & Bear LLP** looks at some examples of successful licensing deals, and outlines the legal issues that must be considered in any successful agreement

The power of a celebrity to draw consumers' attention to their products is not a new phenomenon. However, the number of ways celebrities can now reach consumers (for a vast array of products and services) explains the growth of celebrity licensing. The practice of name dropping by using celebrities to advertise or market a product appears to have increased markedly in the past few years in many industries. Accordingly, if your product appeals to a specific target group, a celebrity can help people in that target group immediately identify with the licensed product. For example, several celebrity brands in the fragrance industry have become top selling products in what has otherwise been described in the industry as a "dismal market".

Weighing licensing decisions

When it comes to adding to brand recognition, using a celebrity could be a tremendous asset. However, it is no surprise that such licensing decisions must be weighed carefully. Aligning a product with a licensed property does not necessarily mean that the product (or the licensed property) will assist each other from a marketing or branding perspective. It is clear that many companies have found a suitable balance between the risks of licensing (think Martha Stewart and Kobe Bryant) and the rewards of licensing (think Donald Trump and Tiger Woods).

In the entertainment industry, the term "Q score" is used to rate a celebrity's overall fame or popularity. The higher the Q score, the more well known a celebrity is. The celebrity branding that makes sense involves a

celebrity who has built a brand in himself (or herself) that can continue to be leveraged through additional products and services. The actual value of a celebrity licence will depend on four things: (1) how hot the celebrity is (the Q score); (2) what product the celebrity is promoting; (3) what is the quality of the licensed product; and (4) the amount of design input the celebrity has in either the marketing or the product itself.

Treating the celebrity as part of a brand means setting up and positioning the licence for when the brand will be marketed. While this timing is not necessarily essential for celebrities who have been around for years (think Paul Newman and Elizabeth Taylor), it may be very important for a celebrity who is competing with several others celebrities for recognition. Of course, if a celebrity is a trendsetter (think David Beckham and Oprah), the affiliation itself may add instant credibility to the licensing of the name without respect to any other timing.

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Celebrity status has always had a traditional role in licensing (think Ronald Reagan and Lucille Ball). Even celebrities no longer with us are regarded as substantial licensing properties (think Marilyn Monroe and Elvis Presley). For example, a year ago CKX Inc, a company controlled by entertainment mogul Robert Sillerman, purchased an 85% stake in the estate of Elvis Presley for

approximately \$100 million. It is estimated that due to the new licensor input royalty payments from the licensees are up at least \$5 million from the year before.

As important as the timing, is the product itself, and the quality of the product. These factors are also essential to ensure the success (and continued success) of a brand. A consumer may purchase a product initially because of a celebrity name, but the consumer will only continue to purchase the product if it stands out in quality.

The final consideration is the involvement of the celebrity with the brand. Generally, celebrities today are very involved in the products, their design and their

rights. Therefore, it is essential to the successful negotiation of the licence to understand the differences between these rights and how they are licensed. While trade mark and copyright law are not exclusive to celebrity licensing, the right of publicity – a state law right – primarily pertains only to celebrity licensing. Accordingly, a celebrity will probably rely on a combination of trade marks, copyrights and the right of publicity to protect and promote his or her persona in licensing, whether it be for an advertising company for a product or for the actual branding of a product itself.

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The right of publicity and trade mark rights are related to the extent that both have the effect of assuring the nature or quality of goods or services to the consumer. However, trade mark rights focus on protecting the consumer, while the right of publicity

marketing. This involvement will lend credibility to the product and further improve the chances of a successful licence.

How celebrity licensing works

Celebrity licensing involves a grant to a licensee that permits the use of the name, signature, voice, image, likeness or other identifiable attribute of a celebrity under certain circumstances. For the most part, celebrity licensing is very similar to other licensing situations, and a licence can be as broad or as narrow as the parties mutually desire. Four of the essential elements to negotiate in a celebrity licence are: (1) to identify the rights involved; (2) to clear those rights; (3) to define the term and scope of grant of the licence; and (4) to determine the payment and other terms of the licence.

The most important component in celebrity licensing is to state precisely the scope of the grant the licensee is receiving. Celebrities possess a variety of identifiable, and therefore licensable, elements. For example, Lucille Ball as a celebrity would have a variety of licensable elements, from her name or signature alone to her distinctive red hair, and the multitude of images and photographs from her numerous movies and TV shows. Likewise, not all of these elements may be owned by the celebrity herself. For example, the affiliated television or movie producers or studios would clearly have copyrightable rights in the films and recordings. Accordingly, the licensor may need to clear certain rights with other entities besides the celebrity.

Celebrity licensing can involve many IP rights: the right of publicity, trade mark rights and copyright

is to protect a personality from unauthorized appropriation. Both trade mark rights and the right of publicity seek to obtain a benefit (economic) from the investment of time and money in the development and promotion of the trade mark (or celebrity).

In the context of a licence for the use of a celebrity's name, image, likeness or other attribute such as voice, there are several criteria that are determinative in the licence terms. On the most basic level, there is a difference between a licence for a merchandise campaign as compared to a licence for an advertising campaign. An advertising use may involve a flat fee for promoting a product, whereas a merchandising use would involve some type of royalty payment based on a relationship between the product and the celebrity. The celebrity would often get a guaranteed royalty as well. This effectively ensures that the celebrity is not sharing all the risk with the licensee. This is generally a proper division given that it is the licensee's duty to know its market and the risks associated with the introduction of the product.

Another material criteria in a licence for the use of a celebrity is the duration of the advertising or merchandising campaign. A campaign that has a one-year term will be more expensive than a campaign that lasts one month. In addition, the how, when and where of the campaign using the celebrity is important. For example, in advertising campaigns, the medium used will determine the cost. A use restricted to radio will not be as expensive as a use involving television. It also must be determined whether the use is to be single run or in a prime time slot, and whether the campaign is of a local,

regional, national or international nature. Finally, a licensee should expect to pay a premium for exclusive use of the celebrity in either a certain product category or for exclusive use of the celebrity for a certain period of time.

It is the celebrity's prerogative to decide initially whether he or she will be involved in a licence. As such, the celebrity may set the terms and royalty for participation in the licence, and the licensee has the right to negotiate those terms or find a different celebrity (if one fits the needed requirements) to use if the celebrity's terms are more than the licensee can afford.

There are clearly risks involved with celebrity licensing, which a licensee must consider in selecting a celebrity to advertise or label their product. The criminal trials of Martha Stewart and Kobe Bryant are clear witness to the risks that can come from a celebrity spokesperson. An interesting alternative is licences using deceased celebrities. A deceased celebrity offers certain advantages in that they generally cannot act in a manner that would embarrass or hurt the image of the licensor's product.

A growth industry

Despite potential risks, there can be no question that the connection between a product and a celebrity creates an image in the consumer's mind that translates

into product recognition (and therefore sales). This connection should be attractive to licensees seeking to distance their products from the competition. A carefully chosen celebrity can therefore bring additional success to an advertising or merchandising campaign.

Celebrity licensing is an emerging growth industry. As licensees continue to realize the effectiveness of celebrity association with their products, the trend will continue to broaden to include all types of celebrities (living and deceased). Despite the difference in years between the era when Fred Astaire and Ginger Rogers were the world's greatest dancers, to the present world

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where Madonna and Britney rule the dance floor, technology now allows these icons to meet (and promote) products. The advent of technology promises to further this growth, allowing immediate global exposure for licensees in a number of new ways. Whether the celebrity is current red-carpet phenomenon or a grand image from the golden-age of Hollywood, celebrity licensing is a powerful way to generate revenue for both the celebrity and the licensee and an aspect of licensing that is here to stay.

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