

Risks and Benefits of Celebrity Licensing

The past decade has seen an explosion of celebrity licensing programmes on a global scale. From Martha Stewart to the Kardashian sisters, celebrity-branded licensed products are now ubiquitous in the marketplace.



space in retail. As a result, the marketplace is simply overcrowded with celebrity brands, making it harder and harder for celebrities to get new deals.

I have a unique perspective on celebrity licensing, having represented both celebrities whose licensing programmes have generated billions of dollars of retail sales internationally and, on the flip side, licensee-manufacturers who have entered into deals with celebrities. This article will address several important legal issues from the perspective of a licensee-manufacturer when entering into celebrity licenses.

KEY CONSIDERATIONS FOR THE LICENSEE-MANUFACTURER

There are a few crucial considerations that need to be taken into account by the licensee-manufacturer.

CELEBRITY PERSONAL APPEARANCES

A critical consideration is to negotiate for an annual minimum commitment exclusive to your product or service categories. Lock in the celebrity for a set number of days at a set price per day.

Additional involvement might be appropriate to assist with online marketing or social media. Think outside of the box-if launching an e-commerce website, negotiate the celebrity's involvement with the site, including web chats, blogs and instant messages.

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Celebrities have long sought to license their names and likenesses in an effort to garner additional revenue and to extend their presence to new product categories. Traditionally, retailers sought out celebrity licensed products because a celebrity's name on a product would serve to differentiate it and make it more attractive to consumers. At the same time, manufacturers looked favourably on celebrity products because they could charge higher prices for

those items than for generic products.

Due to the plethora of newly-minted reality television stars in the United States and around the world, there are now more 'celebrities' seeking licenses than ever before. However, at the same time, the global recession has made celebrity licensing more difficult and challenging. With so many retailers either cutting back or going out of business, there are now more celebrities fighting over reduced shelf

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CELEBRITY TRAVEL, HAIR AND MAKEUP

Negotiate cap on travel, hair and makeup expenses; negotiate caps on number of persons in celebrity entourage.

Limit hair and makeup expenses to personal appearances or advertising related to your specific product category and/or limit pro-rata share if expenses are being borne by several licensees. If the manufacturer is one of many licensees, then the goal with such a provision would be to try to cap the expenses at an annual dollar amount and/or add language that reflects that the expenses will be pro-rated based on a standard calculation amongst all licensees where approval meetings will involve all licensees.

CELEBRITY APPEARANCES IN ADVERTISING

A clause that obligates the celebrity to wear or use the products is essential. Negotiate for the celebrity to wear or use the product or promote the services wherever possible, including in advertisements, at public appearances and award shows. A favourable provision for the manufacturer would be the following: "Celebrity shall be actively involved in promoting the licensed products (whether requested or not by licensee)

and wherever reasonably practicable and appropriate, shall publicly wear or use the licensed products, particularly at public events, shows and appearances."

AVOID NON-COMPETE PROVISIONS

Many celebrities seek to require the manufacturer to agree not to make products for other celebrities (for example, Beyonce may try to prohibit a manufacturer from making products for Mariah Carey or Rihanna). The manufacturer should seek to avoid any restriction that would prohibit other celebrity licenses during the term or after.

CELEBRITY MORALITY CLAUSE

It is essential that the manufacturer requires the celebrity to maintain his or her public goodwill through appropriate public conduct. An entire licensing programme can be tarnished from the celebrity's inappropriate conduct, which could end up costing the manufacturer millions of dollars. There are many ways to structure the morals clause. One such example is: "Celebrity agrees to conduct herself with due regard to public conventions and morals, and agrees that she will not do or commit any act or thing that materially degrades her in society or

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brings her into public hatred or contempt, or that shocks public morals or decency in her community or otherwise substantially and materially devalues the value of this license grant. Any criminal indictment or legal complaint filed with a court for a felony involving moral turpitude by Celebrity shall be deemed a material breach of this agreement by the licensor. The licensor's violation of this paragraph shall constitute a material breach of this agreement."

Even in today's difficult economic climate, there will always be celebrities looking for license agreements and manufacturers willing to take on the risk of a celebrity license because they believe they will make more money from the sales of celebrity-branded products. The key consideration for the licensee-manufacturer is to protect himself to the greatest extent possible. This article has highlighted just some of the many important considerations from the perspective of the licensee-manufacturer.

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